

REPORT
OF THE
ATTORNEY GENERAL

OF THE
STATE OF FLORIDA

FROM JANUARY 1, 1931, TO DECEMBER 31, 1932

CARY D. LANDIS

ATTORNEY GENERAL



TALLAHASSEE, FLORIDA
1932

THE E. O. PAINTER PRINTING COMPANY
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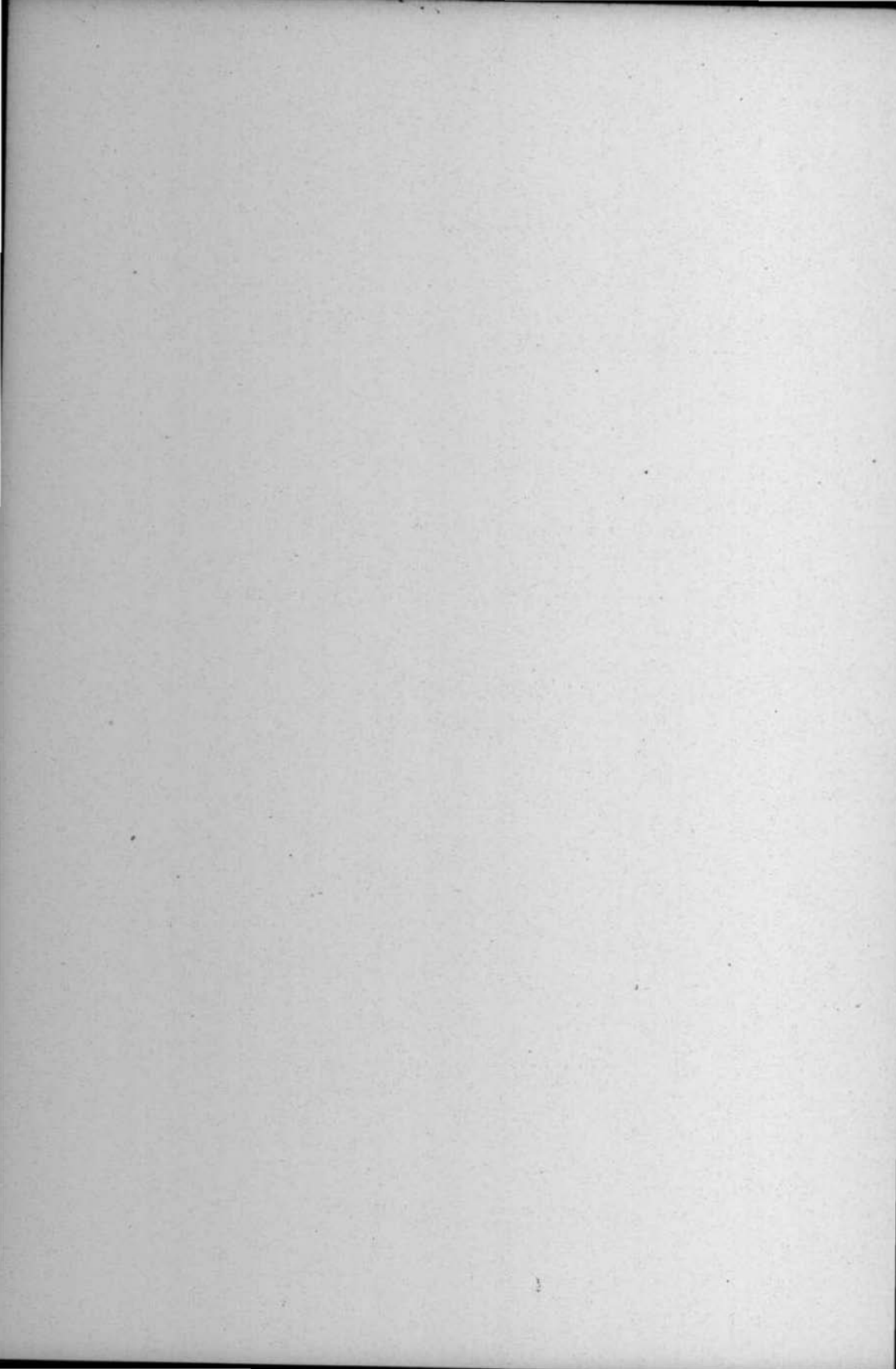


Table of Contents

	PAGE
I. STATE LAW DEPARTMENT	7
II. FORMER ATTORNEY GENERALS OF FLORIDA	7
III. FORMER ASSISTANT ATTORNEY GENERALS OF FLORIDA	8
IV. JUDICIAL DEPARTMENT OF FLORIDA	8
1. Justices of the Supreme Court	8
2. Supreme Court Commissioners	8
3. Clerk Supreme Court	9
4. Attorney General	9
5. Attorney for Railroad Commission	9
6. Attorney for State Road Department	9
7. Judges Circuit Courts	9
8. Judge Court of Record	9
9. Judges Criminal Courts of Record	9
10. Judges Court of Crimes	10
11. Judges Civil Courts of Record	10
12. State Attorneys	10
13. County Solicitors	10
14. County Judges	12
15. Prosecuting Attorneys	12
16. County Attorneys	12
17. Clerks Circuit Court	12
18. Sheriffs	12
V. COUNTIES, COUNTY SEATS AND COUNTY OFFICERS	12
VI. COURT CALENDAR	14
VII. LETTER OF TRANSMITTAL	23
VIII. PERSONAL REPORT OF THE ATTORNEY GENERAL	24
1. General Scope of Duties	24
2. Administrative Duties on Boards	27
3. Board of Commissioners of State Institutions	27
4. State Board of Education	27
5. State Vocational Educational Board	28
6. State Board of Pardons	28
7. Trustees of I. I. Fund and State Drainage Commissioners	28
8. State Convassing Board	29
9. Florida Securities Commission	29
10. State Budget Commission	29
11. Commission to Examine into Validity of State Warrants	30
12. State Sinking Fund Commission	30
13. Railroad, Telegraph and Telephone Assessment Board ...	30
14. State School Book Commission	30

	PAGE
XVIII. PERSONAL REPORT OF THE ATTORNEY GENERAL— <i>Continued</i>	
15. Board for Fixing Values of Investment Securities of Trust Companies	30
16. Board of Commissioners of Okeechobee Flood Control District	30
17. Delinquent Tax Adjustment Board of Appeals	31
18. Board for Supervision and Regulation of Forms to be Used for Assumption of Risk by Surety Companies	31
19. Official Opinions	31
20. Unofficial Opinions	32
21. State Statutes Tested in the Supreme Court of Florida and Federal Courts	32
22. Reporter for the Supreme Court	32
23. Publishing Acts and Resolutions of Legislature	33
24. Examination of Abstracts of Title	33
25. Extradition Matters	33
26. Office Furnishings and Library	33
27. Counsel for Trustees I. I. Fund	34
28. Additional Help for Attorney General	34
IX. APPROPRIATIONS AND EXPENDITURES	36
X. COMPILED STATEMENT OF ALL CASES HANDLED	53
XI. SCHEDULE OF CIVIL CASES	54
XII. SCHEDULE OF QUO WARRANTO CASES, AUTHORITY GIVEN BY ATTORNEY GENERAL TO INSTITUTE	117
XIII. TABULATED REPORT OF CRIMINAL CASES	126
XIV. REPORT OF STATE ATTORNEYS AND COUNTY SOLICITORS	137
XV. OPINIONS, OFFICIAL	221
GOVERNOR AND CABINET:	
1. Governor	221
2. Secretary of State	229
3. Comptroller	248
4. State Treasurer	318
5. Commissioner of Agriculture	336
6. Superintendent of Public Instruction	347
XVI. OPINIONS, SEMI-OFFICIAL	352
STATE OFFICERS:	
1. Adjutant General	352
2. Century of Progress Commission	353
3. Circuit Court Judges	355
4. Civil Courts of Record, Judges	360
5. Florida State College for Women	362
6. Harbor Masters	363
7. Industrial School for Boys	369
8. Juvenile Court, Judge	371
9. Members of the Legislature	372
10. Motor Vehicle Commissioner	382
11. Shell Fish Commissioner	388

XVI. OPINIONS, SEMI-OFFICIAL; STATE OFFICERS—*Continued*

12. State Attorneys	393
13. State Auditor	400
14. State Canal Commission	406
15. State Board of Accountancy	407
16. State Board of Barber Examiners	409
17. State Board of Control	410
18. State Board of Engineering Examiners	414
19. State Board of Examiners in Optometry	414
20. State Board of Health	416
21. State Board of Medical Examiners	422
22. State Board of Public Welfare	423
23. State Board of Naturopathic Examiners	424
24. State Board of Pilot Commissioners	427
25. State Chemist	427
26. State Forester	428
27. State Game Commissioner	430
28. State Hospital for the Insane	435
29. State Hotel Commission	435
30. State Live Stock Sanitary Board	436
31. State Marketing Bureau	438
32. State Plant Board	438
33. State Purchasing Department	439
34. State Racing Commission	440
35. State Road Department	450
36. Trustees Internal Improvement Fund	458
37. University of Florida	462

XVII. OPINIONS, UNOFFICIAL

COUNTY OFFICERS	464
1. Clerks Circuit Court	464
2. Clerk Criminal Court Record	504
3. Constables	504
4. County Attorneys	508
5. County Board Public Instruction	531
6. County Commissioners	547
7. County Judges	564
8. County Prosecuting Attorney	586
9. County Purchasing Agent	590
10. County Solicitors	590
11. County Superintendent Public Instruction	594
12. County Surveyor	614
13. Justices of Peace	615
14. Probation Officer	626
15. Sheriffs	626
16. Special Tax School Districts	643
17. Supervisors of Registration	644
18. Tax Assessors	667

	PAGE
XVII. OPINIONS, UNOFFICIAL; COUNTY OFFICERS— <i>Continued</i>	
20. Traffic Officer	719
19. Tax Collectors	693
CITY OFFICERS	719
1. Chief of Police	719
2. City Attorneys	720
3. City Clerks	724
4. City Council	728
5. City Recorder	728
6. City Tax Collector	729
7. City Treasurer	729
8. Mayors	730
XVIII. MISCELLANEOUS CORRESPONDENCE	732
XIX. INDEX	1067

I.

STATE LAW DEPARTMENT

CARY D. LANDIS	Attorney General
H. E. CARTER	Assistant Attorney General
ROY CAMPBELL	Assistant Attorney General
MARVIN C. McINTOSH*	Assistant Attorney General
MRS. ALLIE YAWN BROWN	Law Clerk and Bookkeeper
MRS. MARGARET E. GANNON	Law Clerk and Stenographer
MISS EVELYN DAVIS	Law Clerk and Stenographer
MISS LORRAINE WARE	Secretary and Stenographer

*By direction of the Trustees of the Internal Improvement Fund, and especially in charge of their work.

II.

ATTORNEYS GENERAL OF FLORIDA

1845-1932

JOSEPH BRANCH	1845-1846
AGUSTUS E. MAXWELL	1846-1848
JAMES T. ARCHER	1848-1848
DAVID P. HOGUE	1848-1853
MARIANO D. PAPY	1853-1860
JOHN B. GALBRAITH	1860-1868
JAMES D. WESCOTT, JR.	1868-1868
A. R. MEEK	1868-1870
SHERMAN CONANT	1870-1870
J. B. C. DREW	1870-1872
H. BISSBEE, JR.	1872-1872
J. P. C. EMMONS	1872-1873
WILLIAM A. COCKE	1873-1877
GEORGE P. RANEY	1877-1885
C. M. COOPER	1885-1889
WILLIAM B. LAMAR	1889-1903
JAMES B. WHITFIELD	1903-1904
W. H. ELLIS	1904-1909
PARK TRAMMELL	1909-1913
THOMAS F. WEST	1913-1917
VAN C. SWEARINGEN	1917-1921
RIVERS BUFORD	1921-1925
J. B. JOHNSON	1925-1927
FRED H. DAVIS	1927-1931
CARY D. LANDIS	1931-1932

III.

FORMER ASSISTANT ATTORNEYS GENERAL
OF FLORIDA

CHARLES O. ANDREWS	1911-1919
GLENN TERRELL	1915-1917
WORTH TRAMMELL	1917-1921
STUART GILLIS	1919-1921
J. B. GAINES	1921-1926
MARVIN C. McINTOSH	1921-1926
H. E. CARTER	1926-1932
ROY CAMPBELL	1926-1932
MARVIN C. McINTOSH	1931-1932

SPECIAL ASSISTANTS TO THE ATTORNEY GENERAL
UNDER CHAPTER 11828, ACTS OF 1927

(Repealed by Chapter 14556, Acts 1920

Approved June 19, 1929)

A. H. WILLIAMS, Tallahassee, Florida.

J. McHENRY JONES, Pensacola, Florida.

WALLACE TERVIN, Bradenton, Florida.

IV.

JUDICIAL DEPARTMENT OF FLORIDA

SUPREME COURT JUSTICES

TALLAHASSEE

DIVISION A

Hon. FRED H. DAVIS, Chief Justice,

Hon. WILLIAM H. ELLIS,

Hon. GLENN TERRELL.

DIVISION B

Hon. JAMES B. WHITFIELD, Presiding Justice,

Hon. ARMSTEAD BROWN,

Hon. RIVERS BUFORD.

*COMMISSIONERS

Hon. CHARLES O. ANDREWS.

Hon. CHARLES E. DAVIS.

Hon. SAM M. MATHEWS.

*Chapter 14533, authorizing Supreme Court Commissioners was repealed by Chapter 15037, Acts 1931, which repealing Act became effective November 8, 1932.

Hon. G. T. WHITFIELD, Clerk Supreme Court.
Hon. CARY D. LANDIS, Attorney General.
Hon. T. T. TURNBULL, Attorney for State Railroad Commission.
Hon. HARRY C. DUNCAN, Attorney for State Road Department.

JUDGES OF THE CIRCUIT COURT

FIRST CIRCUIT—Hon. A. D. CAMPBELL, Hon. L. L. FABISINSKI.
SECOND CIRCUIT—Hon. EDWARD C. LOVE, Hon. J. B. JOHNSON.
THIRD CIRCUIT—Hon. MALLORY F. HORNE, Hon. HAL W. ADAMS.
FOURTH CIRCUIT—Hon. GEORGE COUPER GIBBS, Hon. DEWITT T. GRAY.
DUVAL CIRCUIT—Hon. DANIEL A. SIMMONS.
FIFTH CIRCUIT—Hon. W. S. BULLOCK.
SIXTH CIRCUIT—Hon. O. L. DAYTON, Hon. JOHN U. BIRD, Hon. T. FRANK HOBSON.
SEVENTH CIRCUIT—Hon. M. G. ROWE.
EIGHTH CIRCUIT—Hon. A. V. LONG.
NINTH CIRCUIT—Hon. D. J. JONES.
TENTH CIRCUIT—Hon. H. C. PETTEWAY, Hon. HARRY G. TAYLOR.
ELEVENTH CIRCUIT—Hon. H. F. ATKINSON, Hon. PAUL D. BARNES,
Hon. ULY O. THOMPSON, Hon. W. W. TRAMMELL.
TWELFTH CIRCUIT—Hon. GEO. W. WHITEHURST.
THIRTEENTH CIRCUIT—Hon. L. L. PARKS, Hon. F. M. ROBLES.
FOURTEENTH CIRCUIT—Hon. AMOS LEWIS.
FIFTEENTH CIRCUIT—Hon. C. E. CHILLINGSWORTH.
SIXTEENTH CIRCUIT—Hon. J. C. B. KOONCE.
SEVENTEENTH CIRCUIT—Hon. FRANK A. SMITH.
EIGHTEENTH CIRCUIT—Hon. W. T. HARRISON.
NINETEENTH CIRCUIT—Hon. W. J. BARKER.
TWENTIETH CIRCUIT—Hon. JEFFERSON B. BROWNE.
TWENTY-FIRST CIRCUIT—Hon. ELWYN THOMAS.
TWENTY-SECOND CIRCUIT—Hon. GEO. W. TEDDER.
TWENTY-THIRD CIRCUIT—Hon. MILLARD B. SMITH.
TWENTY-FOURTH CIRCUIT—Hon. FRED L. STRINGER.
TWENTY-FIFTH CIRCUIT—Hon. GEO. W. JACKSON.
TWENTY-SIXTH CIRCUIT—Hon. A. Z. ADKINS.
TWENTY-SEVENTH CIRCUIT—Hon. PAUL C. ALBRITTON.
TWENTY-EIGHTH CIRCUIT—Hon. IRA A. HUTCHISON.

JUDGE OF THE COURT OF RECORD

ESCAMBIA COUNTY—Hon. C. MORENO JONES.

JUDGES OF THE CRIMINAL COURT OF RECORD

DADE COUNTY—Hon. E. C. COLLINS.
DUVAL COUNTY—Hon. JAMES N. PEELER.
HILLSBOROUGH COUNTY—Hon. W. H. PETTEWAY.

MONROE COUNTY—Hon. J. VINING HARRIS.

ORANGE COUNTY—Hon. W. M. MURPHY.

PALM BEACH COUNTY—Hon. J. STOCKTON BRYAN.

POLK COUNTY—Hon. MARK O'QUIN.

VOLUSIA COUNTY—Hon. BERT FISH.

JUDGE OF THE COURT OF CRIMES

DADE COUNTY—Hon. W. F. BROWN.

JUDGES OF THE CIVIL COURT OF RECORD

DADE COUNTY—Hon. D. J. HOFFERMAN, Hon. A. B. SMALL.

DUVAL COUNTY—Hon. BURTON BARRS.

STATE ATTORNEYS

FIRST CIRCUIT—Hon. PURL G. ADAMS, Crestview.

SECOND CIRCUIT—Hon. ORION C. PARKER, JR., Tallahassee.

THIRD CIRCUIT—Hon. J. R. KELLY, Madison.

FOURTH CIRCUIT—Hon. CHARLES M. DURRANCE, Jacksonville.

FIFTH CIRCUIT—Hon. A. P. BUIE, Ocala.

SIXTH CIRCUIT—Hon. CHESTER B. McMULLEN, Clearwater.

SEVENTH CIRCUIT—Hon. MURRAY SAMS, DeLand.

EIGHTH CIRCUIT—Hon. J. C. ADKINS, Gainesville.

NINTH CIRCUIT—Hon. L. D. McRAE, Chipley.

TENTH CIRCUIT—Hon. J. C. RODGERS, Lakeland.

ELEVENTH CIRCUIT—Hon. VERNON HAWTHORNE, Miami.

TWELFTH CIRCUIT—Hon. GUY M. STRAYHORN, Fort Myers.

THIRTEENTH CIRCUIT—Hon. CHARLES B. PARKHILL, Tampa.

FOURTEENTH CIRCUIT—Hon. JOHN H. CARTER, JR., Marianna.

FIFTEENTH CIRCUIT—Hon. L. R. BAKER, West Palm Beach.

SIXTEENTH CIRCUIT—Hon. J. W. HUNTER, Tavares.

SEVENTEENTH CIRCUIT—Hon. H. F. MOHR, Orlando.

EIGHTEENTH CIRCUIT—Hon. DEWEY A. DYE, Bradenton.

NINETEENTH CIRCUIT—Hon. L. GRADY BURTON, Wauchula.

TWENTIETH CIRCUIT—Hon. GEORGE G. BROOKS, JR., Key West.

TWENTY-FIRST CIRCUIT—Hon. ANGUS SUMNER, Fort Pierce.

TWENTY-SECOND CIRCUIT—Hon. LOUIS F. MAIRE, Fort Lauderdale.

TWENTY-THIRD CIRCUIT—Hon. LLOYD F. BOYLE, Sanford.

TWENTY-FOURTH CIRCUIT—Hon. M. C. SCOFIELD, Inverness.

TWENTY-FIFTH CIRCUIT—Hon. JULIAN C. CALHOUN, Palatka.

TWENTY-SIXTH CIRCUIT—Hon. A. S. CREWS, Starke.

TWENTY-SEVENTH CIRCUIT—Hon. HENRY L. WILLIFORD, Sarasota.

TWENTY-EIGHTH CIRCUIT—Hon. C. R. MATHIS, Panama City.

COUNTY SOLICITORS

DADE—Hon. CHAS. A. MOREHEAD, Miami.

DUVAL—Hon. L. D. HOWELL, Jacksonville.

ESCAMBIA—Hon. R. H. MERRITT, Pensacola.

HILLSBOROUGH—Hon. MORRIS M. GIVENS, Tampa.

MONROE—Hon. J. F. BUSTO, Key West.

ORANGE—Hon. O. RAY ELLARS, Orlando.

PALM BEACH—Hon. W. H. ROEBUCK, West Palm Beach.

POLK—Hon. MANUEL M. GLOVER, Bartow.

VOLUSIA—Hon. HERBERT B. FREDERICK, Daytona Beach.

V.

COUNTIES AND COUNTY SEATS AND COUNTY OFFICERS

County	County Seat	County Judges	Prosecuting Attorney	County Solicitors	Clerk Circuit Court	County Attorney	Sheriffs
Alachua	Gainesville	B. D. Hiers	Fred D. Bryant		Geo. E. Evans	S. L. Scruggs	J. P. Ramsey
Baker	Maccleenny	Frank Dowling			J. A. Burnett		Joe Jones, Jr.
Bay	Panama City	C. S. Russ	Joe Bailey		H. A. Pledger	Joe Bailey	O. E. Hobbs
Bradford	Starke	E. K. Perryman	Floyd Green		A. J. Thomas	Floyd Green	W. J. Epperson
Brevard	Titusville	S. J. Overstreet			G. M. Simmons	L. C. Crofton	Roy F. Roberts
Broward	Ft. Lauderdale	Fred B. Shippey	W. G. Miller		E. R. Bennett	Jno Morris, Jr.	Walter R. Clark
Calhoun	Blountstown	W. T. Chafin	Marion B. Knight		J. A. Peacock	Marion B. Knight	R. L. Flanders
Charlotte	Punta Gorda	W. R. Roberts			T. C. Crosland	Earl D. Farr	J. H. Lipscomb
Citrus	Inverness	E. C. May	Geo. W. Scofield		Claude Connor	Geo. W. Scofield	Chas. S. Dean
Clay	Green Cove Spgs.	T. J. Jennings, Jr.	G. W. Geiger		L. T. Ivey	G. W. Geiger	J. P. Hall
Collier	Everglades	Nathan Cockrell			Edmond F. Scott	Nathan Cockrell	L. J. Thorp
Columbia	Lake City	Guy Gillen	G. A. Buie, Jr.		H. B. Summers	G. A. Buie, Jr.	Walter W. Davis
Dade	Miami	W. F. Blanton		Chas. Morehead	E. B. Leatherman	Hudson & Cason	Dan Hardie
DeSoto	Arcadia	Gordon Hays	L. J. Robbins		R. E. Moyer	Leitner & Leitner	J. L. Hampton
Dixie	Cross City	E. M. Barber	McKinney & Edwards		L. L. Currie	McKinney & Edwards	F. L. Anderson
Duval	Jacksonville	J. Ollie Edmunds	J. W. Harrell	L. D. Howell	Elliot W. Butts	Roswell King	Rex Sweat
Escambia	Pensacola	Harvey E. Page	Dixie E. Beggs, Jr.	R. H. Merritt	Langley Bell	Forsyth Caro	H. E. Gandy
Flagler	Bunnell	H. A. Eisenbach	H. A. Henderson		Dale B. Brown	H. A. Henderson	H. R. Whitaker
Franklin	Apalachicola	William Sawyer			W. P. Dodd	R. Don McLeod, Jr.	W. J. Lovett
Gadsden	Quincy	E. M. Dyal	O. J. Clayton		F. F. Morgan	E. P. Gregory	W. M. Inman
Gilchrist	Trenton	M. G. Akins	O. Lamar Crocker		H. E. Harlee	O. Lamar Crocker	R. E. Davis
Glades	Moore Haven	R. C. Voorhees	J. M. Couse		Mrs. D. S. Weeks	B. A. Bales	J. J. Wiggins
Gulf	Wewahatchka	M. H. Chafin	F. M. Campbell		J. R. Hunter	F. M. Campbell	J. E. Pridgeon
Hamilton	Jasper	B. B. Johnson	E. C. Rutledge		W. A. Lewis	E. C. Rutledge	J. R. Hunter
Hardee	Wauchula	F. G. James, Jr.	S. D. Williams		R. Clyde Simmons	S. D. Williams	C. S. Dishong
Hendry	LaBelle	H. A. Rider	Selden L. Stewart		Wm. T. Hull	Louis O. Gravelly	H. L. DeLaney
Hernando	Brooksville	Ed. S. McKenzie			H. C. Mickler	M. A. Coogler	Nell F. Law
Highlands	Sebring	M. C. Whitehurst	Thos. A. McNicholas		W. Z. Carson	Thos. A. McNicholas	Doyle Schumacher
Hillsborough	Tampa	G. H. Cornelius		Morris M. Givens	Chas. E. Culbreath	Sutton, Tillman & Reeves	Will C. Spencer
Holmes	Bonifay	T. L. Belser			J. W. Vanlandingham		Lon F. Brown
Indian River	Vero Beach	C. P. Diamond	Gus A. Tomlinson		Miles Warren	C. P. Diamond	Wm. Frick
Jackson	Marionna	D. H. Oswald			H. A. Bowles	E. C. Welch	W. F. Chambliss
Jefferson	Monticello	T. B. Bird	J. H. Shuman		Clyde H. Sauls	S. D. Clarke	Lamar W. Sledge
LaFayette	Mayo	E. S. Winburn	Lester Summerville		Cullen W. Edwards		Thos. J. Pearson
Lake	Tavares	E. M. Tally	W. M. Kennedy		Geo. J. Dykes	J. W. Hunter	W. B. Gibson
Lee	Ft. Myers	D. E. Ward	E. M. Magaha		W. L. Draughon	Roy D. Stubbs	Bob King
Leon	Tallahassee	W. May Walker	Clyde W. Atkinson		Paul V. Lang	W. Blount Myers	Frank Stoutamire
Levy	Bronson	J. C. Sale			L. W. Drummond	J. R. Willis	W. B. Whiddon
Liberty	Bristol	C. G. Herndon	Marion B. Knight		W. G. Larkins	Marion B. Knight	E. A. Chestang
Madison	Madison	J. W. Kinsey			D. F. Burnett, Jr.		G. L. Morrow
Manatee	Bradenton	W. H. Tucker	Geo. R. Hitchcock		Iverson Lloyd	J. B. Fuqua	J. P. Davidson

Marion	Ocala	L. E. Futch			T. D. Lancaster	E. H. Martin	S. C. M. Thomas
Martin	Stuart	E. J. Smith, Jr.	A. R. Clonts		J. R. Pomeroy	Evans Crary	C. E. Christensen
Monroe	Key West	Hugh Gunn	John G. Sawyer	J. F. Busto	Ross C. Sawyer	Wm. V. Albury	Karl O. Thompson
Nassau	Fernandina	H. V. Burgess	H. J. Baker		G. C. Burgess	H. J. Baker	A. J. Higginbotham
Okaloosa	Crestview	Lloyd C. Powell	Geo. W. Barrow		Allen T. Carr		John P. Steele
Okeechobee	Okeechobee	T. W. Conely, Jr.	B. L. Jennings, Jr.		J. L. Barber	R. E. Hamrick	Claude Simmons
Orange	Orlando	Victor Hutchins		O. Raymond Ellars	C. M. Gay	W. L. Tilden	Harry Hand
Osceola	Kissimmee	J. F. Robinson	Lawrence Rogers		J. L. Overstreet		Young Tindall
Palm Beach	West Palm Bch.	R. P. Robbins		W. E. Roebuck	Geo. C. Butler	A. L. Rankin	R. C. Baker
Pasco	Dade City	J. W. Sanders	J. Don Geiger		A. J. Burnside		C. E. Dowling
Pinellas	Clearwater	H. R. Hewitt	H. S. Baynard		K. B. O'Quinn	John C. Blocker	E. G. Cunningham
Polk	Bartow	C. M. Wiggins		Manuel M. Glover	J. D. Raulerson	M. D. Wilson	W. W. Chase
Putnam	Palatka	C. S. Green	P. B. Revels		W. A. Williams, Jr.	A. H. Odom	R. J. Hancock
St. Johns	St. Augustine	J. P. Baker			Obe P. Goode	W. A. McWilliams	E. E. Boyce
St. Lucie	Ft. Pierce	F. C. Dame	Baxter Goodlet		W. R. Lott	F. L. Hemmings	B. A. Brown
Santa Rosa	Milton	A. L. Johnson	E. Dixie Beggs		Geo. H. Leonard	R. A. McGeachy	Jos. T. Allen
Sarasota	Sarasota	Francis C. Dart	H. P. Philpot		J. R. Peacock	J. V. Keen	C. B. Pearson
Seminole	Sanford	Jas. G. Sharon			V. E. Douglass	Jno. G. Leonardy	J. F. McClelland
Sumter	Bushnell	J. M. Eaddy	P. B. Howell		Roy Caruthers	J. T. McCollum	W. T. Coleman
Suwannee	Live Oak	Mack H. Padgett	Alfred T. Alrth		R. T. Miller	Alfred T. Alrth	W. H. Lyle
Taylor	Perry	L. W. Blanton	T. J. Swanson		Jas. R. Jackson	T. J. Swanson	F. L. Lipscomb
Union	Lake Butler	J. E. Wainwright	Joe Hill Williams		S. T. Dowling	Joe Hill Williams	W. S. Brannen, Jr.
Volusia	DeLand	J. E. Peacock			I. Walter Hawkins	W. J. Gardiner	S. E. Stone
Wakulla	Crawfordville	A. L. Porter	R. M. Hartsfield	H. P. Fredericks	L. L. Pararo		E. C. Ferrell
Walton	DeFuniak Spgs.	D. N. Trotman	D. Stuart Gillis		M. T. Fountain	D. Stuart Gillis	M. H. Prescott
Washington	Chipley	A. D. Carmichael	H. S. Bailey		Leon R. Cox	H. S. Bailey	John P. Harrell

VI.

CIRCUIT COURT CALENDAR

FIRST JUDICIAL CIRCUIT

JUDGES: A. G. CAMPBELL, DeFuniak Springs, Florida
L. L. FABISINSKI, Pensacola, Florida.

STATE'S ATTORNEY: PURL G. ADAMS, Crestview, Florida

WINTER TERM

WALTON	Second Monday January
SANTA ROSA	Second Monday after Second Monday January
ESCAMBIA	Second Monday February
OKALOOSA	Second Monday December

SPRING TERM

WALTON	Second Monday May
SANTA ROSA	Second Monday after Second Monday May
ESCAMBIA	Second Monday June
OKALOOSA	Last Monday April

FALL TERM

WALTON	Second Monday September
SANTA ROSA	Second Monday after Second Monday September
ESCAMBIA	Second Monday October
OKALOOSA	Last Monday August

SECOND JUDICIAL CIRCUIT

JUDGES: E. C. LOVE, Quincy, Florida
JOHN B. JOHNSON, Tallahassee, Florida

STATE'S ATTORNEY: ORION C. PARKER, JR., Tallahassee, Florida

SPRING TERM

FRANKLIN	Third Monday March
LIBERTY	First Monday April
GADSDEN	First Monday March
WAUKULLA	Third Monday April
JEFFERSON	First Monday May
LEON	Third Monday May

FALL TERM

FRANKLIN	Third Monday September
LIBERTY	First Monday October
GADSDEN	Third Monday October

WAUKULLA	First Monday November
JEFFERSON	Third Monday November
LEON	First Monday December

THIRD JUDICIAL CIRCUIT

JUDGES: MALLORY F. HORNE, Jasper, Florida
HAL W. ADAMS, Mayo, Florida

STATE'S ATTORNEY: J. R. KELLY, Madison, Florida

SPRING TERM

HAMILTON	Fourth Monday January
DIXIE	Third Monday February
TAYLOR	Fourth Monday March
MADISON	Second Monday April
COLUMBIA	Fourth Monday April
SUWANNEE	Second Monday May
LA FAYETTE	Tuesday after Second Monday June

FALL TERM

HAMILTON	Second Monday September
DIXIE	Second Monday August
TAYLOR	Fourth Monday September
MADISON	Second Monday October
COLUMBIA	Fourth Monday October
SUWANNEE	Second Monday November
LA FAYETTE	First Tuesday after Fourth Monday November

FOURTH JUDICIAL CIRCUIT

JUDGES: DANIEL A. SIMMONS (Duval Circuit), Jacksonville, Florida
GEORGE COUPER GIBBS, Jacksonville, Florida
DEWITT T. GRAY, Jacksonville, Florida

STATE'S ATTORNEY: CHARLES M. DURRANCE, Jacksonville, Florida

ASSISTANT STATE'S ATTORNEY: S. B. WILSON, Jacksonville, Florida

SPRING TERM

CLAY	First Tuesday after First Monday April
NASSAU	Third Monday April
DUVAL	Third Monday May

FALL TERM

CLAY	Second Monday October
NASSAU	Fourth Monday October
DUVAL	Fourth Monday November

FIFTH JUDICIAL CIRCUIT

JUDGE: W. S. BULLOCK, Ocala, Florida

STATE'S ATTORNEY: A. P. BUIE, Ocala, Florida

SPRING TERM

MARION

Second Monday February

SUMMER TERM

MARION

Second Monday June

FALL TERM

MARION

Second Monday October

SIXTH JUDICIAL CIRCUIT

JUDGE: JOHN U. BIRD, Clearwater, Florida

O. L. DAYTON, Dade City, Florida

T. FRANK HOBSON, St. Petersburg, Florida

STATE'S ATTORNEY: CHESTER B. McMULLEN, Clearwater, Florida

SPRING TERM

PINELLAS

First Monday May

PASCO

First Tuesday April

FALL TERM

PINELLAS

First Monday December

PASCO

First Tuesday October

SEVENTH JUDICIAL CIRCUIT

JUDGE: M. G. ROWE, Daytona Beach, Florida

STATE'S ATTORNEY: MURRAY SAMS, DeLand, Florida

SPRING TERM

VOLUSIA

Second Tuesday in April

FALL TERM

VOLUSIA

Second Tuesday November

EIGHTH JUDICIAL CIRCUIT

JUDGE: A. V. LONG, Gainesville, Florida

STATE'S ATTORNEY: J. C. ADKINS, Gainesville, Florida

SPRING TERM

ALACHUA

Second Monday January

GILCHRIST

Fourth Monday April

LEVY

Second Monday April

SUMMER TERM

ALACHUA

First Monday June

FALL TERM

ALACHUA

First Monday November

GILCHRIST

Third Monday October

LEVY

Fourth Monday September

NINTH JUDICIAL CIRCUIT

JUDGE: D. J. JONES, Chipley, Florida

STATE'S ATTORNEY: L. D. McRAE, Chipley, Florida

SPRING TERM

HOLMES

Fourth Monday February

WASHINGTON

Fourth Monday March

FALL TERM

HOLMES

Fourth Monday September

WASHINGTON

Fourth Monday October

TENTH JUDICIAL CIRCUIT

JUDGES: H. C. PETTEWAY, Lakeland, Florida

HARRY G. TAYLOR, Bartow, Florida

STATE'S ATTORNEY: J. C. ROGERS, Lakeland, Florida

SPRING TERM

POLK

Second Tuesday March

FALL TERM

POLK

Second Tuesday October

ELEVENTH JUDICIAL CIRCUIT

JUDGES: ULY O. THOMPSON, Miami, Florida

PAUL D. BARNES, Miami, Florida

W. W. TRAMMELL, Miami, Florida

STATE'S ATTORNEY: VERNON HAWTHORNE, Miami, Florida

ASSISTANT STATE'S ATTORNEY: HENRY M. JONES, Miami, Florida

SPRING TERM

DADE

Second Tuesday May

FALL TERM

DADE

Second Tuesday November

WINTER TERM

DADE

Second Tuesday February

TWELFTH JUDICIAL CIRCUIT

JUDGE: GEO. W. WHITEHURST, Arcadia, Florida

STATE'S ATTORNEY: GUY M. STRAYHORN, Fort Myers, Florida

SPRING TERM

GLADES	First Monday February
COLLIER	First Monday March
HENDRY	Third Monday February
CHARLOTTE	Third Tuesday March
LEE	First Tuesday April

FALL TERM

GLADES	First Monday September
COLLIER	Third Monday September
HENDRY	First Monday October
CHARLOTTE	Third Tuesday October
LEE	First Tuesday November

THIRTEENTH JUDICIAL CIRCUIT

JUDGES: F. M. ROBLES, Tampa, Florida

L. L. PARKS, Tampa, Florida

STATE'S ATTORNEY: CHARLES B. PARKHILL, Tampa, Florida

ASSISTANT STATE'S ATTORNEY: V. R. FISHER, Tampa, Florida

SPRING TERM

HILLSBOROUGH	First Tuesday May
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FALL TERM

HILLSBOROUGH	First Tuesday November
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FOURTEENTH JUDICIAL CIRCUIT

JUDGE: AMOS LEWIS, Marianna, Florida

STATE'S ATTORNEY: JOHN H. CARTER, JR., Marianna, Florida

SPRING TERM

JACKSON	Second Monday May
CALHOUN	Fourth Monday April
GULF	Second Monday April

FALL TERM

JACKSON	Second Monday October
CALHOUN	Fourth Monday September
GULF	Second Monday September

WINTER TERM

JACKSON	Second Monday January
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FIFTEENTH JUDICIAL CIRCUIT

JUDGE: C. E. CHILLINGWORTH, West Palm Beach, Florida

STATE'S ATTORNEY: L. R. BAKER, West Palm Beach, Florida

JANUARY TERM

PALM BEACH First Tuesday after First Monday January

MARCH TERM

PALM BEACH First Tuesday after First Monday March

JUNE TERM

PALM BEACH First Tuesday after First Monday June

OCTOBER TERM

PALM BEACH First Tuesday after First Monday October

SIXTEENTH JUDICIAL CIRCUIT

JUDGE: J. C. B. KOONCE, Tavares, Florida

STATE'S ATTORNEY: J. W. HUNTER, Tavares, Florida

SPRING TERM

SUMTER Third Monday April

LAKE First Tuesday after First Monday in May

FALL TERM

SUMTER Third Monday October

LAKE First Tuesday after First Monday in October

SEVENTEENTH JUDICIAL CIRCUIT

JUDGE: FRANK A. SMITH, Orlando, Florida

STATE'S ATTORNEY: H. F. MOHR, Orlando, Florida

SPRING TERM

OSCEOLA Third Monday March

ORANGE Third Monday April

FALL TERM

OSCEOLA Third Monday September

ORANGE Third Monday October

EIGHTEENTH JUDICIAL CIRCUIT

JUDGE: W. T. HARRISON, Palmetto, Florida

STATE'S ATTORNEY: DEWEY A. DYE, Bradenton, Florida

SPRING TERM

MANATEE Second Tuesday March

FALL TERM

MANATEE Third Tuesday October

NINETEENTH JUDICIAL CIRCUIT

JUDGE: W. J. BARKER, Sebring, Florida

STATE'S ATTORNEY: L. GRADY BURTON, Wauchulla

SPRING TERM

DeSOTO	First Tuesday March
HARDEE	Third Tuesday March
HIGHLANDS	First Tuesday April

FALL TERM

DeSOTO	First Tuesday October
HARDEE	Third Tuesday October
HIGHLANDS	First Tuesday November

TWENTIETH JUDICIAL CIRCUIT

JUDGE: JEFFERSON B. BROWNE, Key West, Florida

STATE'S ATTORNEY: GEO G. BROOKS, JR., Key West, Florida

SPRING TERM

MONROE	Third Monday April
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FALL TERM

MONROE	Third Monday October
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TWENTY-FIRST JUDICIAL CIRCUIT

JUDGE: ELWYN THOMAS, Fort Pierce, Florida

STATE'S ATTORNEY: ANGUS SUMNER, Fort Pierce, Florida

SPRING TERM

INDIAN RIVER	Second Tuesday March
St. LUCIE	Second Tuesday April
OKEECHOBEE	Second Tuesday February
MARTIN	Second Tuesday June

FALL TERM

INDIAN RIVER	Second Tuesday October
St. LUCIE	Second Tuesday November
OKEECHOBEE	Second Tuesday September
MARTIN	Second Tuesday January

TWENTY-SECOND JUDICIAL CIRCUIT

JUDGE: GEO. W. TEDDER, Fort Lauderdale, Florida

STATE'S ATTORNEY: LOUIS F. MAIRE, Fort Lauderdale, Florida

SPRING TERM

BROWARD	Second Tuesday March
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FALL TERM

BROWARD

Second Tuesday October

TWENTY-THIRD JUDICIAL CIRCUIT

JUDGE: MILLARD B. SMITH, Titusville, Florida

STATE'S ATTORNEY: LLOYD F. BOYLE, Sanford, Florida

SPRING TERM

SEMINOLE

Fourth Tuesday May

BREVARD

Fourth Tuesday March

FALL TERM

SEMINOLE

First Tuesday December

BREVARD

Second Tuesday October

TWENTY-FOURTH JUDICIAL CIRCUIT

JUDGE: FRED L. STRINGER, Brooksville, Florida

STATE'S ATTORNEY: M. C. SCOFIELD, Inverness, Florida

SPRING TERM

CITRUS

Second Monday April

HERNANDO

Second Monday March

FALL TERM

CITRUS

Second Monday November

HERNANDO

Second Monday October

TWENTY-FIFTH JUDICIAL CIRCUIT

JUDGE: GEORGE WM. JACKSON, St. Augustine, Florida

STATE'S ATTORNEYS: JULIAN C. CALHOUN, Palatka, Florida

SPRING TERM

ST. JOHNS

First Monday June

FLAGLER

Third Monday May

PUTNAM

Second Monday March

FALL TERM

ST. JOHNS

Second Monday November

FLAGLER

Second Monday December

PUTNAM

Second Monday October

TWENTY-SIXTH JUDICIAL CIRCUIT

JUDGE: A. Z. ADKINS, Starke, Florida

STATE'S ATTORNEY: A. S. CREWS, Starke, Florida

SPRING TERM

BAKER

Third Monday April

BRADFORD

First Monday May

UNION

Second Monday June

FALL TERM

BAKER

Second Monday October

BRADFORD

First Monday November

UNION

First Monday December

TWENTY-SEVENTH JUDICIAL CIRCUIT

JUDGE: PAUL C. ALBRITTON, Sarasota, Florida

STATE'S ATTORNEY: HENRY L. WILLIFORD, Sarasota, Florida

SPRING TERM

SARASOTA

First Tuesday May

FALL TERM

SARASOTA

Third Tuesday October

WINTER TERM

SARASOTA

Third Tuesday January

TWENTY-EIGHTH JUDICIAL CIRCUIT

JUDGE: IRA A. HUTCHINSON, Panama City, Florida

STATE'S ATTORNEY: C. R. MATHIS, Panama City, Florida

SPRING TERM

BAY

Second Monday March

FALL TERM

BAY

Fourth Monday September

VII
LETTER OF TRANSMITTAL
STATE OF FLORIDA
ATTORNEY GENERAL'S OFFICE

Tallahassee, Florida, Jan. 1, 1933.

*To His Excellency, Honorable Doyle E. Carlton,
Governor of Florida:*

SIR:

As required by the constitutional mandate, directing each officer of the Executive Department to make full report of his official acts, of the receipts and expenditures of his office and of the requirements of the same to the Governor at regular periods, or whenever the Governor shall require it, and in compliance with such mandate, as well as in compliance with long established custom in this State by which such reports are made to cover the two calendar years immediately preceding each regular session of the Legislature, I have the honor to submit herewith the Report of this office, covering the period from January 1, 1931, to December 31, 1932. The Hon. Fred H. Davis, now Justice of the Supreme Court, occupied the office of Attorney General from January 1, 1931, to March 9, 1931, and the undersigned has occupied the same from March 9, 1931, to December 31, 1932, thus it is that this report covers such occupancy of the office by both Judge Davis and the undersigned.

Respectfully submitted,

CARY D. LANDIS,
Attorney General.

VIII.

GENERAL SCOPE OF DUTIES

The Attorney General is required by common law to exercise certain powers and perform a great variety of duties of great public importance in the due and proper administration of our State Government.

The constitutional duties of the Attorney General are prescribed by Section 22 of Article IV of the Constitution as follows:

"The Attorney-General shall be the legal adviser of the Governor, and shall perform such other legal duties as may be prescribed by law. He shall be Reporter for the Supreme Court."

There are many statutes pertaining to the duties and powers of the Attorney General and relating to the conduct of the office and the following are quoted as information:

"The Attorney General shall reside at the seat of government, and shall keep his office in a room in the capitol; he shall perform the duties prescribed by the Constitution of this State, and also perform such other duties appropriate to his office, as may from time to time be required of him by law, or by resolution of the Legislature; he shall, on the written requisition of the Governor, Secretary of State, Treasurer, or Comptroller, give his official opinion and legal advice in writing on any matter touching their official duties; he shall appear in and attend to in behalf of the State, all suits or prosecutions, civil or criminal, or in equity, in which the State may be a party, or in any wise interested, in the Supreme Court of the State; he shall appear in and attend to such suits or prosecutions in any other of the courts of the State, or in any courts of any other State, or of the United States; he shall have and perform all powers and duties incident or usual to such office, and he shall make and keep in his office a record of all his official acts and proceedings, containing copies of all his official opinions, reports and correspondence, and also keep and preserve in his office all official letters and communications to him, and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the Governor of the State, and to the disposition of the Legislature by act or resolution thereof." (Section 125, Comp. Laws, 1927.)

"In case of the disability of the Attorney General to perform any official duty devolving on him, by reason of interest or otherwise, the Governor or Attorney General of this State may appoint another person to perform such duty in his stead." (Section 126, Comp. Laws, 1927.)

"The Attorney General shall prepare marginal abstracts to the several sections and a general alphabetical index to the entire general acts and resolutions of each session of the Legislature as soon as practicable after the adjournment thereof, and also an index to the local acts and an index to each of the journals of the two branches of the Legislature. Such acts and resolutions and forms of proceedings thereunder prepared by the Attorney General shall be published under his direction." (Section 127, Comp. Laws, 1927.)

"It shall be the duty of the Attorney General at the convening of each session of the Legislature of this State, or as soon thereafter as possible, to recommend a person experienced in indexing, to supervise and assist the respective clerks of each branch of the Legislature having such work in hand, in making the index for both journals. His compensation shall be fixed by the Legislature as other attaches and he shall have as many days as the Legislature may designate by resolution after the close of each session for completing and presenting his work for approval by the Attorney General, who is authorized to approve such index if found correct, before the payment shall be made for the extra days allowed after the close of the Legislature." (Section 128, Comp. Laws, 1927.)

"It shall be the duty of the Attorney General to make a written report to the Governor five days before the first day of every session of the Legislature, as to the effect and operation of the acts of the last previous session, the decisions of the court thereon, and referring to the previous legislation on the subject, with such suggestions as in his opinion the public interest may demand, which report shall be laid before the Legislature by the Governor with his first message." (Section 129, Comp. Laws, 1927.)

"It shall be a misdemeanor in office for the Attorney General to take or receive any fee for defending any supposed offender in any of the courts." (Section 130, Comp. Laws, 1927.)

"The Attorney General shall exercise a general superintendence and direction over the several State Attorneys of the several circuits as to the manner of discharging their respective duties, and whenever requested by the State Attorneys, shall give them his opinion upon any question of law." (Section 131, Comp. Laws, 1927.)

"The Attorney General shall prescribe the time and manner in which regular quarterly reports shall be made to him by State Attorneys, and it shall be their duty to comply with his instructions in this respect." (Section 132, Comp. Laws, 1927.)

"The Clerk of the Supreme Court is hereby directed to deliver to the Attorney General a copy of each volume or part of volume of the decisions of the Supreme Court of Florida, which may be in the care or custody of said Clerk, and which the Attorney General's office may be without, and take the Attorney General's receipt for the same. The Attorney General shall keep the same in his office at the capitol, and each retiring Attorney General shall take the receipt of his successor for the same and file such receipt in the Treasurer's office: Provided, that this shall not authorize the taking away of any book belonging to the Supreme Court library, kept for the use of said Court." (Section 133, Comp. Laws, 1927.)

"The Attorney General is required to prepare and cause to be printed a sufficient number of copies of fee bills of the various officers of the several counties of this State, and send, or cause to be sent, copies of said fee bills to all county officers in this State. Such officers shall keep posted in a conspicuous place in their office such fee bills, for the information of persons having business with them." (Section 4677, Comp. Laws, 1927.)

In addition to the duties embraced in the foregoing sections of the statutes, other provisions of law make it the duty of the Attorney General to approve the bond of the Comptroller (Sec. 140), of the Shell Fish Commissioner (Sec. 1844), prosecute combinations against Florida meats (Sec. 7076), and investigate and rectify commercial discriminations (Secs. 3940-3943), enjoin violations of the laws regulating commercial feed stuffs (Sec. 3259), conduct condemnation proceedings on behalf of Board of Commissioners of State Institutions (Sec. 5105) and on behalf of the Adjutant General's office for military purposes (Sec. 2054), approve article of incorporation for co-operative marketing associations (Sec. 6473), examine and pass on statements filed by investment companies (Sec. 5997), bring proceedings to forfeit charters of corporations which violate the laws or fail to comply with mandatory requirements of same (Sec. 7946), enforce the anti-trust laws of the State (Sec. 7946), pass upon revocation of licenses of investment companies (Sec. 6001), bring proceedings to annul franchise of corporations not for profit under certain conditions (Sec. 6505), approve title to real estate in which the State is interested (Sec. 2399), pass upon permits of associations doing business under a declaration of trust (Sec. 7093), represent the State in disbarment proceedings in the Supreme Court (Sec. 4176), pass upon and approve regulations of district drainage boards (Sec. 1494), certify Everglades Drainage District bonds (Sec. 1555), bring proceedings against fair associations for annulment of their charters when laws relating to same are violated (Sec. 6524), prepare and publish copies of opinions of the Supreme Court (Secs. 4713, 1983) and act as reporter for the Supreme Court (Sec. 4714), participate in hearings on prosecutions instituted against violators of pure food and drug laws (Sec. 3201), prepare forms for hunting licenses (Sec. 1898), furnish indexes to laws and journals of the Legislature (Sec. 1933), conduct proceedings against insolvent or defaulting insurance companies (Sec. 6202, 6228), conduct all quo warranto proceedings (Secs. 5446, 8162), act as attorney for the Railroad Commission (Secs. 6720, 6732, 6734, 6747, 6751) although this work is negligible because of a provision for the Railroad Commission to employ special counsel under Section 6732; attend all legal business arising in connection with the laws governing the salt water fishing industry (Sec. 1846), prepare bond of contractor for uniform school books (Secs. 860-861), pass upon legality of and give approval to all investments of school district sinking funds in purchases of bonds (Sec. 736), devise and furnish a form of seal for all the courts of the State (Sec. 4881), bring proceedings for annulment of franchises of social clubs under certain conditions (Sec. 6505), control and supervise acts of special assistants to the Attorney General who are not part of the Attorney General's office force, being directly responsible to and appointed by the Governor for special work (Secs. 134-135); give special attention to legal proceedings in connection with the sponge fishing industry (Sec. 1886), conduct suits on bonds of State health officer (Sec. 3170), act as legal advisor and attorney for State Plant Board (Sec. 3833), act as legal advisor for State Road Department (Sec. 1639) which has, however, a special attorney who acts for it in ordinary cases; sue to recover fines for doing business without a license (Sec. 7450), bring suits to re-

strain the advertisement of liquors (Sec. 7600); conduct prosecutions against defaulting and delinquent surety companies (Sec. 6296), assist in fixing values of securities deposited with State Treasurer by trust companies under the Trust Act (Sec. 6131), enforcement of vital statistics law (Sec. 3293).

"Chapter 14832, Laws of Florida, Acts of 1931, creating the State Racing Commission designates the Attorney General as the official attorney of such Commission."

ADMINISTRATIVE DUTIES ON BOARDS

The Attorney General is required to perform a great variety of administrative duties as a member of various boards and he is called upon to answer numerous inquiries from State, County and Municipal officers as matters of information and as an aid to bring about uniformity of administration of the law.

The major part of the important business of the State is performed and handled by Boards and Commissions, created by the Constitution and Laws of the State, and this consumes much of the time of the State officials.

The Attorney General is a member of the following Boards and Commissions:

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS

This Board is composed of the Governor and his entire cabinet, which includes the Attorney General. (Sec. 17, Art. IV, Constitution).

This Board has the management and control of all the State Institutions, which includes the Florida State Hospital, State Prison Farm, all State convicts, both the Industrial School for Boys and the School for Girls and the Home for the Feeble Minded.

The control and management of these institutions places upon this Board innumerable and most important duties.

The Attorney General not only acts as a member of this Board but is also its legal advisor in the various legal and quasi legal questions arising in the management of these large and important institutions.

STATE BOARD OF EDUCATION

This Board is composed of the Governor, Secretary of State, Attorney General, State Treasurer and State Superintendent of Public Instruction. (See Sec. 12, Art. III, Const.)

Upon this Board is imposed the duty of taking charge of and handling all lands of the State held for educational purposes, also to conserve, manage and safely keep the educational funds of the State; and also many other duties in connection with the general educational system of the State.

The Attorney General is the legal advisor of this Board, as well as a member thereof.

STATE VOCATIONAL BOARD

By virtue of Chapter 7376, Acts of 1917, (Sec. 842, C. G. L.) the State Board of Education was created the State Vocational Board contemplated by Acts of Congress to co-operate with the Federal Board of Vocational Education in the administration of the Federal Act.

Under this law the State received from the United States for the years 1930-1933 the following amounts:

1930-1931	Smith Hughes Fund	\$65,570.98
	George Reed Fund	10,435.78
	Voc. Rehabilitation	10,000.00
1931-1932	Smith Hughes Fund	84,785.54
	George Reed Fund	16,662.69
	Voc. Rehabilitation	12,006.16
1932-1933	Smith Hughes Fund	76,306.98
	George Reed Fund	16,663.18
	Voc. Rehabilitation	12,006.16
Total		\$304,437.47

This Board designates the schools at which vocational education in agriculture, the trades and industries shall be taught and also sees to the administering of the provisions of this law.

STATE BOARD OF PARDONS

This Board is composed of the Governor, Secretary of State, Attorney General, Comptroller and Commissioner of Agriculture. (Sec. 12, Art. IV, Const.)

The Constitution gives this Board the power to remit fines and forfeitures, commute punishment, grant pardons in all cases except treason and impeachment.

With an average prison population now of about 3,214 it can readily be seen that there are many who feel the urge to apply for clemency of some form.

Two regular meetings of this Board are held each year and during the year 1932 there were 1607 applications filed with and passed upon by the Board. Life, liberty, suffering and anxiety of the applicants, as well as dependents and society in general, are involved and of necessity careful consideration must be and is given each application, and this consumes a great deal of time of each member of the Board.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND AND
STATE BOARD OF DRAINAGE COMMISSIONERS

These Boards are composed of the same officials, to-wit: The Governor, Attorney General, Comptroller, State Treasurer and Commissioner of Agriculture. (See Sec. 1385 and 1524, respectively, C. G. L.)

The Trustees of the Internal Improvement Fund hold title to and have the exclusive management and control of all lands belonging to the State which were acquired by Acts of Congress of March 3, 1845, and September 28, 1850, which at this time amounts to approximately 1,062,813.93 acres of swamp and overflow land, 3,639.34 acres of Internal Improvement land proper, and an unknown quantity of land owned by the State under its right of sovereignty.

The law places upon the Board of Drainage Commissioners the duty of establishing a system of canals, drains, levees, dikes and reservoir to drain and reclaim the swamp and overflowed lands within the drainage districts.

Much time is consumed by the members of these boards in carrying out the duties imposed upon them relative to the important matters involved.

STATE CANVASSING BOARD

This Board is composed of the Secretary of State, Comptroller and Attorney General. (Sec. 348, C. G. L.) The duties of this Board are to canvass the returns of all general elections for State officers.

FLORIDA SECURITIES COMMISSION

This Commission was created by Chapter 14,899, Acts of 1931, Laws of Florida, and is composed of the Comptroller, Treasurer and Attorney General.

This Board is invested with the power of administering the act and enforcing its provisions. The purpose of the act, is the protection, as far as possible, of the investing public in the purchase of securities. The duties of this Board require frequent meetings and consume considerable time in hearings and study and investigation of Domestic and Foreign Corporations, their assets, plans of operation, etc.

STATE BUDGET COMMISSION

This Commission is composed of the Governor, Secretary of State, Comptroller, Treasurer, Attorney General, Commissioner of Agriculture and State Superintendent of Public Instruction. (Sec. 1366, C. G. L., also Chap. 14,654, Acts 1931.)

It is the duty of this Commission to make and assemble reports of their own departments and of all other bureaus, divisions, officers, commissions, institutions and other State agencies and thus prepare a State Budget to be submitted to the Legislature as a basis for the General Appropriation Bill. This work requires much careful thought and consideration and consumes quite considerable time—many departments and institutions desire to be heard in fairness to their reports and proposed recommendations to be made in the budget.

COMMISSION TO EXAMINE INTO VALIDITY OF STATE WARRANTS

This Commission is composed of three members, the Comptroller, Treasurer and Attorney General. (Sec. 1361, C. G. L.) The duty of this commission is to pass upon the validity and legality of Comptroller's warrants and the Treasurer's certificates issued prior to July 1, 1871.

STATE SINKING FUND COMMISSION

This Commission is composed of five members—Governor, Secretary of State, Attorney General, State Treasurer and State Superintendent of Public Instruction. (Sec. 1379, C. G. L.)

The control of the sinking fund to retire state debt is vested in this commission.

BOARD OF ASSESSMENT OF RAILROADS, TELEGRAPH AND TELEPHONE COMPANIES

This Board is composed of three members—Comptroller, Attorney General and Treasurer. (Sec. 960, C. G. L.)

The Board's duty is to make assessments of the Railroad, Telegraph and Telephone property in the State. To do this, much data and information have to be gathered, hearings held and most careful consideration and thought given to the matter as well as mature judgment exercised in making these assessments.

STATE SCHOOL BOOK COMMISSION

This Commission is composed of the Governor and his entire cabinet, which includes the Attorney General. (Sec. 852, C. G. L.) It is the duty of this Board to select and adopt an uniform series or system of school books for use in the public schools of the State and to enter into contracts for same with the publishers and to enforce the use of such books.

BOARD FOR FIXING VALUES OF INVESTMENT SECURITIES OF TRUST COMPANIES

This Board is composed of the Treasurer, Attorney General and Comptroller, and its title indicates the scope of its duties. (Sec. 6131, C. G. L.)

BOARD OF COMMISSIONERS OF OKEECHOBEE FLOOD CONTROL DISTRICT

The Attorney General is one of the ten members of this Board. The duty of this Board is to establish, construct and maintain canals, levees, dikes, etc., and do the things required by the Act, looking to Flood Control of lands set forth and described in the Act. (Chap. 13,711, Acts of 1929.)

DELINQUENT TAX ADJUSTMENT BOARD OF APPEALS

This Board is composed of the Governor, Treasurer and Attorney General. This Board sits as a Board of Appeals in tax appeals provided for in the act creating the Board. (Chap. 14,572, Acts of 1929.)

BOARD FOR SUPERVISION AND REGULATION OF FORMS
TO BE USED FOR ASSUMPTION OF RISK BY
SURETY COMPANIES

This Board is composed of the Governor, Comptroller, Treasurer and Attorney General, and its title indicates its duties. (Chap. 14,489, Acts of 1929.)

Regular weekly meetings of the Trustees of the Internal Improvement Fund, State Board of Education, and Commissioners of State Institutions are held once each week on Wednesdays. The State Board of Pardons holds two regular meetings each year—March and September—and numerous other special meetings for the consideration of emergency matters. The Railroad Assessment Board meets annually. The Florida Security Commission meets two or more times per month and the other boards meet at irregular times, monthly, quarterly, annually or biennially, as called by their respective chairmen—the meetings being called and held as the business of the particular board demands.

OFFICIAL OPINIONS

In accordance and compliance with the Constitution and statutes of the State, I have during the period of this report, upon request of the administrative officers of the Executive Department of the State Government, prepared written opinions covering their official duties and powers, and have advised with them generally when called upon.

As required by law copies of all such opinions are on file in this office and many of them are set out in full in this report for convenient use by all such officers and others who may have an interest in them.

This office has been frequently called upon by other State officers, boards and commissions, such as the State Hotel Commission, State Shell Fish Commission, State Labor Inspector, State Board of Control, State Board of Health, etc., for opinions and advice covering their powers and duties, and while this office is not expressly required to do so, yet I have at all times sought to render such advice and furnish such written opinions, feeling that it would be of assistance in the proper interpretation and application of the statutes covering their powers and duties.

Some of these opinions are set forth in this report.

There is a large volume of work done by this office in the nature of consultation with officers wherein legal advice is sought on various questions arising in the different departments. Frequently much time is required in

making proper investigations in order that proper advice may be given. Very much time of the Attorney General is thus consumed but from the very nature of the work, no record of it can be made and hence is not incorporated herein.

UNOFFICIAL OPINIONS

The Attorney General is not charged by law with the duty of advising County, District and Municipal officers.

In the past it seems there has developed a practice, whereby as a matter of courtesy to those making inquiry and with a view to aiding in a uniform administration of the laws that regulate the conduct and prescribe the powers and duties of such officers, the Attorney General has undertaken to advise such officials.

I have undertaken to continue this policy as far as possible. However, the official work of this department is constantly and rapidly increasing and this class of work will of necessity have to be curtailed or more help furnished the office.

I have at all times replied to this class of inquiries as promptly as possible, but at the same time have always given first consideration to official matters.

A large number of these unofficial opinions so rendered are incorporated in this report.

STATE STATUTES TESTED IN THE SUPREME COURT OF FLORIDA AND IN THE FEDERAL COURTS

A large number of State statutes, and especially revenue producing statutes enacted during the session of the Legislature of 1931, have been challenged and attacked by appropriate Court proceedings, both in the State and Federal Courts. A complete table of such cases, showing details of the litigation and present status is incorporated in this report.

Civil cases generally, other than those above mentioned, have had my attention and the detailed scheduled report herein includes these also.

Criminal cases reaching the Supreme Court have all been given proper attention, briefs filed and arguments made, the details of and present status is shown in the scheduled report herein. This also applies to all certiorari and habeas corpus proceedings.

REPORTER FOR THE SUPREME COURT

The Constitution requires the Attorney General to act as reporter for the Supreme Court.

During the two-year period covered by this report, the Attorney General has acted as reporter for Volumes 101, 102, 103 and 104 of the Florida Supreme Court Reports.

All of this work is quite exacting and requires the greatest care for it must be accurate. Supplying omitted citations of cases, must be done by research and interlineation of the book and page where same may be found—this occurs where the Court cites a case decided at its current term and is at the time unable to give book and page of same.

An Index Digest of the cases of each volume of the reports must be carefully made before it can be printed.

The Court expects the Attorney General to insert in each report a cross index reference of where each case reported may be found in the Southern Reporter—this requirement has been met at all times but it can readily be seen that to supply these references requires much labor and time.

PUBLISHING ACTS AND RESOLUTIONS OF LEGISLATURE

The Acts and Resolutions of the Legislature of the State for the regular and special sessions of 1931 have been published with marginal abstracts, as required by law, under the direction of this office.

An index to these laws and an index to the journals of each branch of the Legislature were also prepared under the direction of this office, the index to the journals having been prepared as provided by Section 128 (104) Compiled General Laws, 1927.

EXAMINATION OF ABSTRACTS OF TITLE

Where conveyance of title is made to the State or any of its institutions, the abstracts are submitted to the Attorney General, as well as abstracts covering title to property on which mortgages are deposited with the State Treasurer as securities under the Trust Act. This consumes considerable time as and when these matters are presented.

EXTRADITION MATTERS

It is the fixed policy of the Governor to refer to the Attorney General the applications for extradition of fugitives from justice. These applications have to be examined and approved or rejected, and not infrequently hearings are requested and had and written recommendations made to the Governor, all of which require considerable time of either the Attorney General or one of the Assistants.

OFFICE FURNISHINGS AND LIBRARY

Co-operating in the spirit of economy, I have purchased only such small items of furniture as was absolutely necessary and have bought only such books for the library as were necessary in particular cases actually in the office. The continuing series of law books have, of course, been kept up to date.

COUNSEL FOR TRUSTEES INTERNAL IMPROVEMENT FUND

Owing to the fact that the legal work of the Trustees Internal Improvement Fund is closely related to the general work of this office and owing to the further fact that this office is quite overburdened with work, the Trustees of the Internal Improvement Fund by resolution directed that Hon. Marvin C. McIntosh, attorney for said Trustees, should act as Assistant Attorney General and under the direction of the Attorney General. This was done with the idea that by such co-ordination this office might be somewhat relieved. This, in my opinion, has worked most successfully.

At the present time there is much litigation in the way of foreclosures and various other litigation which consumes practically all of the time of Mr. McIntosh as Attorney for the Internal Improvement Fund, yet I feel, and Mr. McIntosh joins me in the thought, that it would be best for the interest of the State to have the attorney for the Internal Improvement Fund to be permanently made an Assistant Attorney General and this work be carried on by the Attorney General's office.

I recommend that this be done by appropriate legislation in the session of 1933.

Although acting under the direction of the Attorney General yet he has been paid by the Trustees of the Internal Improvement Fund out of their funds and not from the General Appropriation for the Attorney General's office.

ADDITIONAL HELP FOR ATTORNEY GENERAL

My predecessor in office in his last annual report used the following language:

"Owing to the financial conditions prevailing at present. I am making no request for additional help in the office, although same is much needed."

I feel that conditions now are no better and I adopt this statement of my predecessor.

I would state, however, that owing to the depression and conditions generally, much more work is cast upon this office.

Bank failures have caused much litigation in which the Comptroller is made a party; all revenue laws of any consequence without exception have been tested through every Court; the Florida Securities Commission Act passed at the 1931 session has entailed much more work in this office; the State Racing Act provided that the Attorney General should be counsel for the Commission and this racing system had to be installed—bonds, contracts, permits, etc., had to be prepared and all legal problems arising during the racing season were submitted to this office for passing upon and thus it is that the burdens on this office are great.

In conclusion I wish to state that I have endeavored to carry on the work of this department in as economical manner as possible. I especially call attention to the expenditures as shown under the appropriate heading.

I believe this statement will compare most favorable with the law department of any State or business concern handling a like amount of litigation and legal business.

I cannot close this report without giving due credit to each and every one connected with this department. To do and perform the vast amount of work going through this office, it has been necessary for all to work together as one team and know no definite office hours, all have co-operated in this. Much night work and over hours have been necessary but every one connected with the department has at all times done this willingly and in the proper spirit and they, and each of them, are entitled to their full share of credit for what has been accomplished.

Most respectfully submitted,

CARY D. LANDIS,
Attorney General.

IX.

APPROPRIATIONS AND EXPENDITURES

APPROPRIATIONS

Balance on hand January 1, 1931, for use to June 30, 1931—

Attorney General	\$ 3,000.00
Assistant	2,500.00
Assistant	2,500.00
Law Clerk and Bookkeeper	1,050.00
Law Clerk and Stenographer	1,050.00
Two Stenographers	2,654.96
Indexing and Sidenoting Fund, etc.	1,366.56
Incidental Fund	1,782.59
Law Book Fund	484.43
Office Equipment Fund	000.00
TOTAL	\$16,388.54

Appropriations July 1, 1931, to June 30, 1933—

Attorney General	\$12,000.00
Assistant	10,000.00
Assistant	10,000.00
Law Clerk and Bookkeeper	4,400.00
Two Law Clerks and Stenographers	8,400.00
Two Stenographers	6,000.00
Indexing and Sidenoting Fund, etc.	2,500.00
Incidental Fund	5,000.00
Law Book Fund	1,500.00
Office Equipment Fund	800.00
Appropriation of unexpended Balance in Indexing and Sidenoting Fund (Chapter 14641)	1,080.59
TOTAL	\$61,680.59
TOTAL AMOUNT	\$78,069.13

EXPENDITURES

January 1, 1931, to December 31, 1932—

Attorney General	\$12,000.00
Two Assistants	19,583.40
Law Clerk and Bookkeeper	4,166.64
Two Law Clerks and Stenographers	8,050.30
Two Stenographers	4,356.54
Index Fund	1,410.97

Incidental Fund	4,179.26
Book Fund	1,354.80
Office Equipment Fund	467.33

TOTAL	\$55,569.24
Amount Salaries reverted as shown by Comptroller's Books	1,847.80

TOTAL	\$57,417.04
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BALANCE to Cover all Expenses to July 30, 1933	\$20,652.09
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NOTE—See Itemized Statements following.

ITEMIZED STATEMENT

OF EXPENDITURES OF ATTORNEY GENERAL FROM THE APPROPRIATION FOR INDEXING
AND SIDE-NOTING LAWS, PROOFREADING AND INDEXING
SUPREME COURT REPORTS, ETC.

March, 1931—

Fred H. Davis, Attorney General, expense trip to Jacksonville <i>in re</i> State vs. Florida Natl. Bank, also conference <i>in re</i> hearing Log Rate Case act for 3/7/31	\$ 37.37
Fred H. Davis, Attorney General, expense trip to Atlanta and return <i>in re</i> hearing on Mandate of the Supreme Court of the U. S. in case of State et al. vs. U. S. et al	31.10

April—

Bancroft-Whitney Co., Hughes on Federal Prac.	117.50
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June—

Mrs. Willis Brown, to compiling and preparing Index-Digest and Table of Cases for Volume 100, Part 1, Florida Supreme Court Reports	100.00
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July—

Mrs. Willis Brown, to compiling and preparing Index-Digest and Table of Cases for Vol. 100, Part 2, Florida Supreme Court Reports	100.00
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October—

Robert Parker, Indexing and Sidenoting the General Laws of 1931	300.00
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January, 1932—

Clyde Atkinson, indexing the Special Laws of 1931	125.00
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March—

Mrs. Willis Brown, to compiling and preparing Index-Digest and Table of Cases for Vol. 101, Florida Supreme Court Reports	200.00
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June—

Mrs. Willis Brown, to compiling and preparing
Index-Digest and Table of Cases for Vol. 102,
Florida Supreme Court Reports 200.00

October—

Mrs. Willis Brown, to compiling and preparing
Index-Digest and Table of Cases for Volume
103, Florida Supreme Court Reports 200.00

TOTAL EXPENDED \$ 1,410.97

COMPILED STATEMENT OF INDEX AND SIDENOTNG FUND

Balance on hand January 1, 1931 \$ 1,366.56

Appropriation for two years from July 1, 1931 to June 30, 1933 2,500.00

TOTAL 3,866.56

Less amount reappropriated 1,080.59

\$ 2,785.97

TOTAL Amount Expended to December 30, 1932 1,410.97

BALANCE \$ 1,375.00

ITEMIZED STATEMENT

OF EXPENDITURES OF ATTORNEY GENERAL FROM APPROPRIATION FOR
INCIDENTAL EXPENSES

January, 1931—

Postal-Telegraph-Cable Co.	\$ 6.82
Sou. Tel. & Const. Co.,	5.60
Roller for Typewriter, Kaufman	1.00
Five Bottles Sulphur Water, Miller	2.50
Florida Clipping Service	10.00
W. H. May, P. M., Stamps	10.00
Tallahassee Office Sup. Co. 2, four drawer steel files	96.00
W. U. Tel. Co.	3.53
W. H. May, P. M., Postal Cards	1.00
Tallahassee Office Sup. Co. 2 No. 235 steel sections for index	12.00
Typewriter Service Co., cleaning and adjusting L. C. Smith	7.50
T. J. Appleyard Co., Gummed Labels, file guides, index cards	4.46

February—

W. H. May, P. M., 5,000 stamped env.	114.40
Underwood Typewriter Co., cleaning and adjusting Underwood	7.50
W. H. Miller, five bottles water	2.50
W. U. Tel. Co.	2.40
Postal Tel. Co.	13.15
Grant Furn. Co., framing map	2.50
Sou. Tel. & Const. Co.	6.90
Florida Clipping Service	10.00
J. O. Perkins, ink and almanac	.75
T. J. Appleyard Co., furnishing and printing 500 No. 8 2c envelopes; paper and mimeo letter hds.	18.76
T. J. Appleyard, file guides, felt pad, ink pad, World Almanac, 1 box rubber bands	4.89
Fred H. Davis, Atty. General, expense trip to Gainesville to attend Bar Association Meeting, and conferring with State Attorney <i>in re</i> defaulted fidelity bonds, and conference in Jacksonville <i>in re</i> handling proceedings in future in Florida Log Rate Case	50.91
Tallahassee Office Sup. Co., 2 sets legal file guides	5.00
Tallahassee Office Sup. Co., 6 doz. pencils	3.00
T. J. Appleyard, 1,000 index cards	1.31
Van Brunt & Yon, 1 box floor wax	.85
Pace Truck Line, transportation chgs. on chair	1.30
Perdue Office Furn Co., 1 mahogany office chair	54.00

March—

W. H. Thomas, 5 bottles water	2.50
Florida Clipping Service	10.00
Postal Tel. Cable Co.	3.99
Sou. Tel. & Const. Co.	18.55
W. U. Tel. Co.	3.04
Moore's Repair Shop, 4 keys	1.50
Maude Glass, 3 bottles of Scatt	2.50
Tallahassee Office Sup. Co., 1 set guides, 100 letter size folders	3.50
Tallahassee Office Sup. Co., 2 sets card guides, letter size	2.00
W. H. May, P. M., stamps	10.00
T. J. Appleyard, Inc., 25 sheets tag board, 25 sheets for scrap book, 6 glass paper weights, 1 scrap book, 1 fac simile signature stamp	11.26
Tallahassee Office Sup. Co., 100 heavy file folders, 2 sets letter size guides, ½ pint Carter's ink	7.25
Kee Lox Mfg. Co., 3 boxes carbon	6.00
Railway Express Agency, charges on papers from Columbia, S. C.	.47

April—

Postal Tel. Cable Co.	13.25
Railway Express Co., charges on Cahoon papers to Clerk Supreme Court at Washington, D. C.	.73
Florida Clipping Service	10.00
Sou. Tel. & Const. Co.	16.95
Grant Furn. Co., can furn. polish and framing picture for office	2.75
T. J. Appleyard, 1,000 letterheads and 500 envel- opes—all engraved	38.00
A. R. Richardson, 1 set rubber typewriter keys and box noiseless carbon	7.50
Tallahassee Office Supply Co., 1 box noiseless carbon	4.00
W. U. Tel. Co.	11.85
Leon Electric Sup. Co., wiring for extension tele- phone and buzzers	20.30
W. H. May, P. M., deposit to cover postage due ...	2.00
Geo. D. Barnard Stationery Co., 5,000 embossed letter heads, 5,000 embossed thin letter heads, changing dye and 5 boxes plain paper	97.00
Adams' Studio, portrait of General Adams, without frame, and portrait of Gen. Landis with frame	25.00
T. J. Appleyard, Inc., walnut swivel chair, 1 Bostitch machine, 1 box staples and 1 doz. paper fas- teners	28.83
Tallahassee Office Sup. Co., 1 Steel Secretarial Desk	95.00
H. & W. B. Drew Co., 100 Special Manuscript covers	4.50
Tallahassee Office Sup. Co., 2 Steel card index files, 5 sets tab guides	18.60
Tallahassee Office Supply Co., 2 boxes Noiseless carbon, 1 box Remington rubber keys, 1 box Underwood keys	16.00
H. & W. B. Drew Co., 1½ doz. Binder Clips and 1 Argus Moistener	3.50

May—

Sou. Tel. & Const. Co.	9.70
Leon Electric Sup. Co., 1 pull cord	.90
Florida Clipping Service	10.00
T. J. Appleyard Inc., 1 box plain white envelopes	2.37
W. U. Tel. Co.	18.81
Postal Tel. Cable Co.	7.49
H. R. Kaufman, adjusting Underwood	.75
W. H. May, P. M., stamps for mailing Attorney General's Reports	30.00
W. M. Miller, 14 bottles of water	7.00
H. & W. B. Drew Co., 1 Shaeffer Pen and Desk Stand	13.00

Modern Appliance Co., 11 boxes Bostitch Staples	19.26
H. & W. B. Drew Co., 100 engraved business cards for Attorney General	8.00
Keystone Env. Co., 100 Blue Rope Brief Covers	11.94
Tallahassee Office Sup. Co., 3,000 sheets sea-foam bond, grey, and 1 set twirlers	9.50
T. J. Appleyard Inc., 1 case Dixie cups	11.40
Geo. D. Barnard Co., 1 metal name plate for Gen- eral Landis' photograph	2.05
Curtis 1000 Inc., 1,000 envelopes	8.25
T. J. Appleyard, Inc., 100 sheets ruled paper for Docket Index	3.80
Tallahassee Office Supply Co., one-half gross Stand- ard Pencils	3.25

June—

Florida Clipping Service	10.00
Tallahassee Office Supply Co., 1 ash tray and drawer rack, and 3 drawer dividers	4.85
T. J. Appleyard, Inc., 1 white enamel water cooler	15.20
Postal Tel. Cable Co.	5.30
Railway Express Agency, charges on pkg.	2.27
Sou. Tel. & Const. Co.	27.45
Leon Electric Sup. Co., 1 new electric fan and cleaning and repairing one	36.25
W. U. Tel. Co.	6.38
Mrs. A. E. Fitzgerald, ash trays	1.50
W. H. May, P. M., stamps	30.00
Tallahassee Office Sup. Co., noiseless ribbon and bottle ink	1.15
W. R. Miller, 2 bottles water	1.00
Leon Electric Sup. Co., cleaning and repairing two fans	2.25
Postal Tel. Cable Co.	2.98
Florida Clipping Service	10.00
W. U. Tel. Co.	10.93
Sou. Tel. & Const. Co.	16.80

TOTAL Six Months \$ 1,315.53

July, 1931—

Underwood Typewriter Co., Mach. No. 3559817	\$ 81.50
King Mfg. Co., repair chair	2.50
Tallahassee Office Supply Co.—	
1 doz. Stickit	\$3.50
1000 Index Cards	1.50
½ doz. boxes label	.90

\$5.90

T. J. Appleyard, Inc., 10-5 drawer files	409.69
August—	
C. B. McKinnon, awning	25.00
W. H. May, Postmaster, envelopes	179.00
Dixon's Transfer—Drayage	.50
Florida Clipping Service	10.00
Leon Electric Supply Co., installing electric buzzer	9.85
Sou. Tel. & Const. Co.	20.75
W. U. Tel. Co.	10.13
Postal Tel. Co.	5.36
W. J. McElwain, refitting bookcase	1.25
Tallahassee Office Supply Co., box file, index cards and record book	2.50
W. H. May, Postmaster, bal. on envelopes and stamps	15.00
September—	
Florida Clipping Service	10.00
Postal Tel. Cable Co.	4.10
W. U. Tel. Co.	1.10
Sou. Tel. Const. Co.	50.00
Leon Electric Supply Co.	1.25
Grant Furniture Co., picture frame	1.25
Albert Scott—2 days' cleaning office	2.50
Tallahassee Office Supply Co., 10 reams Seafoam Bond	9.50
October—	
T. J. Appleyard, Inc., 1 ream Atlantic Mimeo bond	1.42
Sou. Tel. & Const. Co.	17.75
W. U. Tel. Co.	5.07
Postal Tel. & Cable Co.	2.79
Florida Clipping Service	10.00
Tallahassee Variety Wks., repairing bookcase	2.50
The H. & W. B. Drew Co., 1 doz. Binder Clips and rubber stamp	1.75
Albert Scott, cleaning library	1.50
New Way Laundry, cleaning rug	.50
November—	
Sou. Tel. & Const. Co.	9.10
Florida Clipping Service	10.00
Postal Tel. Cable Co.	3.00
D. D. Cureton, Jr., changing radiator	13.17
Tallahassee Office Supply Co., typewriter ribbons	9.50
Leon Electric Supply Co., changing wall plugs, switch and installing buzzer	24.33
Tallahassee Office Supply Co., 2 boxes Acco fast- eners and 6 wedge erasers	2.40
W. U. Tel. Co.	4.38

T. J. Appleyard, Inc., 200 legal folders and 4 boxes labels	8.74	
The U. S. Daily for two years	15.00	
Cary D. Landis—Expense trip to inspect farm and dairy, Fla. State Hospital	7.70	
Tallahassee Office Supply Co., ½ gross standard pencils	3.25	
November—		
W. H. May, Postmaster, stamps	25.00	
H. H. Bohler, lettering door and re-finishing desk	11.00	
December—		
The H. & W. B. Drew Co., 6 sets chair feet and 3 sets rubber coasters	8.50	
Florida Clipping Service	10.00	
Sou. Tel. & Const. Co.	19.40	
W. U. Tel. Co.	3.07	
Postal Tel. Cable Co.	5.50	
B. A. Meginnis, atty. Am. Surety Co., premium on Surety Bond & Notary Commission, Allie Yawn Brown	14.00	
Cary D. Landis, expense trip Jax. in re Conference Tax Collectors	15.10	
Pardue Office Furn. Co., 2 mahogany upholstered arm chairs	106.78	
The H. & W. B. Drew Co., 2 sets rubber chair castors and 2 sets rubber feet	5.40	
Leon Electric Supply Co., Bell Transformer	1.40	
The Tallahassee Office Supply Co., re-fillers for calendar pads	1.95	
TOTAL Six Months		\$1,239.48
January, 1932—		
Grant Furn. Co., framing picture	\$ 3.50	
Postal Tel. Cable Co.	2.88	
Florida Clipping Service	10.00	
Bradbury & Hall—cleaning and repairing typewriter	7.50	
Abel Tousey Co.—500 Victor No. 28 Em	2.00	
Sou. Tel. & Const. Co.	39.60	
Tallahassee Office Sup. Co., ink and calendar pads	1.35	
W. U. Tel. Co.	6.29	
W. L. Marshall, book shelves	7.00	
H. & W. B. Drew Co., 5½ doz. L. E. B. clips	3.00	
February—		
Postal Tel. Cable Co.,	1.93	
W. U. Tel. Co.	1.74	
Sou. Tel. & Const. Co.	23.35	

Florida Clipping Service	10.00
Cary D. Landis—Inspection trip to Belle Glade, Girl's School and Epileptic Colony, Gainesville	10.25
March—	
W. H. May, Postmaster, 10,000 envelopes and stamps for mailing election laws	278.80
Postal Tel. Cable Co.	4.41
Sou. Tel. & Const. Co.	17.25
Tallahassee Office Supply Co., 1 doz. scratch pads and World's Almanac	2.52
Florida Clipping Service	10.00
W. U. Tel. Co.	4.80
Tallahassee Office Supply Co., one-half gross pencils	3.25
Bass Hardware Co.—Rug Cleaner	.75
April—	
Sou. Tel. and Const. Co.	31.05
Florida Clipping Service	10.00
Postal Tel. Cable Co.	7.56
W. U. Tel. Co.	7.99
Cary D. Landis, expense trip to State Bar Assn.	51.67
Tallahassee Office Supply Co., repairing staple mach.	1.25
H. & W. B. Drew Co., 10,000 letter heads and 3,000 plain sheets	75.98
Clark Furn. Co., repairing and refinishing two chairs for office	3.75
May—	
Florida Clipping Service	10.00
Hunter Press—Application for requisition blanks and reference pads	10.00
E. Kary, cleaning and adjusting Underwoods Nos. 11-3738137 and 11-3733460	3.00
Sou. Tel. and Const. Co.	22.10
The H. & W. B. Drew Co., 500 tab guides	6.90
Tallahassee Supply Co., 5,000 Vortex Cups	10.50
Postal Tel. Cable Co.	8.59
U. S. Government Printing Office—15th Census U. S. Population, Vol. III	3.25
W. U. Tel. Co.	2.54
Leon Electric Supply Co., repairing electric fan	.75
E. Kary, new spring drum frame for Erro-No. and repairing	2.75
The Gift Shop—ash trays and flower holders	2.50
June—	
W. U. Tel. Co.	1.08
Postal Tel. Cable Co.	1.91
Sou. Tel. and Const. Co.	9.05
Florida Clipping Service	10.00

Leon Electric Supply Co.—cleaning and repairing electric fans	2.50
Tallahassee Office Supply Co., 1 box Stickit \$3.50	
2 coupon books for 2 doz. Underwood Star Ribbons	19.00
1 box plain index cards	1.50
T. J. Chason, Postmaster, stamps	100.00
E. Kary—Adjusting and furnishing parts for Underwood No. 11-3733137	1.75
Tallahassee Office Supply Co., Coupon Book for 1 doz. Box Star Defender Carbon, 1 box pencils and ink	32.20
Albany Paper Co., 5,000 drinking cups	10.00
Marlow and Iwaya Co., 12 coupons for 12 boxes carbon	22.94
Tallahassee Office Supply Co., 100 Angular tab guides	13.80
TOTAL Six Months	\$ 953.33

July—

Marlow & Iwaya, 1 box carbon	1.92
Geo. P. Barnard Stationery Co., 1 metal name plate	2.00
Postal Tel. Cable Co.	9.44
Sou. Tel. and Const. Co.	33.50
Florida Clipping Service	10.00
Tallahassee Office Supply Co., pads	1.92
W. U. Tel. Co.	5.76
Cary D. Landis, inspection trip to Raiford	25.08
E. Kary, adjusting Underwood 11-3733137	1.25
Cary D. Landis, expense trip West Palm Beach meeting Flood Control Board	3.75
Tallahassee Office Sup. Co., typewriter pad and ink	1.50
Tallahassee Office Supply Co., one-half gross manilla pads	9.00
T. J. Chason, Postmaster, stamps	75.00

August—

Keystone Envelope Co., file pockets	148.20
Sou. Tel. and Const. Co.	12.25
Florida Clipping Service	10.00
Westinghouse Electric Supply Co., fan	21.50
Dixon's Transfer—drayage	.55
Postal Tel. Cable Co.	2.85
W. U. Tel. Co.	2.97
Van Brunt & Yon—floor wax	.75

September—

W. U. Tel. Co.	3.11
Postal Tel. Cable Co.	4.55

Sou. Tel. and Const. Co.	9.90
Florida Clipping Service	10.00
Railway Express Agency—charges on Abstract, Columbia, S. C.	.38
Leon Electric Supply Co.—Repairing and parts for fan	7.50
Cary D. Landis, expense trip Atlanta, hearing Log Rate Case	30.15
October—	
Florida Clipping Service	10.00
Postal Tel. Cable Co.	6.54
Sou. Tel. and Const. Co.	14.35
Railway Express Agency—express on papers Lake Butler	.37
W. U. Tel. Co.	2.93
Tallahassee Office Supply Co.	5.90
Appleyard Office Supply Co.—scratch pads	2.25
November—	
Sou. Tel. and Const. Co.	25.80
Postal Tel. Cable Co.	16.71
Florida Clipping Service	10.00
Panama Carbon Co.—Coupons for typewriter ribbons	16.50
Railway Express Agency—express on law books	.48
W. U. Tel. Co.	18.05
Keystone Envelope Co.—labels for files	2.17
Tallahassee Office Supply Co.—6 boxes manuscript covers	10.80
T. J. Chason, Postmaster—stamps	45.00
Cary D. Landis—amt. paid personally of telegram Office Business	2.70
December—	
Sou. Tel. Const. Co.	12.50
W. U. Tel. Co.	9.45
Florida Clipping Service	10.00
Postal Tel. Cable Co.	3.44
TOTAL Six Months	\$ 670.72
TOTAL expended January 1, 1931, to Dec. 31, 1932	\$ 4,179.26

COMPILED STATEMENT OF INCIDENTAL EXPENSE ACCOUNT

Balance on hand January 1, 1931	\$ 1,782.59
Appropriation for two years from July 1, 1931, to June 30, 1933	5,000.00
TOTAL	\$ 6,782.59
Total amount expended January 1, 1931, to December 30, 1932	\$ 4,179.26
BALANCE	\$ 2,603.31

ITEMIZED STATEMENT

OF EXPENDITURES OF ATTORNEY GENERAL FROM THE APPROPRIATION FOR THE
PURCHASE OF BOOKS

January, 1931—

West Publishing Co., subscription to—

N. W. Rep. Vol. 231	\$ 4.75	
N. E. Rep. Vol. 172	4.75	
S. W. Rep. Vol. 29-30 (2)	9.50	
S. E. Rep. Vol. 153-4	9.50	
Sou. Rep. Vol. 129	4.75	
Pac. Rep. Vol. 289, 290-1	14.25	
Fed. Rep. Vol. 41-52 (2)	9.50	
Oct. Installment on Fla. and Southern Digest	18.50—\$	75.50

Chas. E. George, Editor Law and Banker, and Central Law Journal, subscription	4.00	
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March—

Vernon Law Book Co., Rose on Federal Procedure	15.00	
West Pub. Co., So. Rep. Digest Pocket Parts, 1930, 2 sets	20.80	

Bancroft-Whitney Co., Amr. Law Reps. Vol.

69-70	\$15.00	
1930 U. S. C. A. Quarterly Service 1 yr. 16.00		
Amr. Law Rep. Digest Service	5.00—\$	36.00

Lawyers' Co-operative Pub. Co.—

1930 Pocket Sup. R. C. L.	\$10.00	
U. S. Digest 9	9.00	
U. S. Digest 10	9.00	
U. S. R. Vol. 74	7.50	
U. S. Adv. 1930	3.00	
1931 Pocket Sup. U. S. Dig.	2.50	
	<u>\$41.00</u>	

By previous warrant	\$10.00	
Allowance for old Digest 9	6.00	
Allowance for old Digest 10	9.00	
By previous warrant	3.00	
	<u>\$28.00</u>	

By Warrant No. 10871	\$ 13.00	
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The Frank Shepard Co., subscription—

to Fla. Citations	\$14.00	
to U. S. Citations	14.00—\$	28.00

April—

West Pub. Co., Subscription to—

N. W. Rep. Vols. 232-3	\$9.50	
N. E. Rep. Vol. 173	4.75	

S. W. Rep. Vols. 31, 2, 3	14.25	
S. E. Rep. Vol. 155	4.75	
Sou. Rep. Vol. 130-1	9.50	
Atl. Rep. Vol. 151-2	9.50	
Pac. Rep. Vol. 192-3	9.50	
Fed. Rep. Vol. 43-4	9.50	
Current Digest Vol. 5	10.00—	\$ 81.25
The Amr. Legislators' Asso., sub to "State Gov."	2.50	
The Harrison Co., 2 copies Compiled General Laws, 1930 Supplement at \$20.00 each		\$ 40.00
May—		
The American Law Book Co., 1931 Corpus Juris CYC, Permanent Annotated Volume	8.00	
The Bobbs Merrill Co., Subscription to Pamphlet Supplement to U. S. Code Unannotated to Dec. 31, 1931	3.00	
June—		
Lawyers' Co-operative Pub. Co., 1931 Pocket Sup- plement to R. C. L. Perm.	10.00	
Supt. of Documents, Government Printing Office, 15th Census 1930, Vol. 1	2.00	
The Banks Law Pub. Co., Boovier's Law Dictionary, Century Ed.	10.00	
Underwood Typewriter Co., 1 Underwood Type- writer	99.00	
TOTAL		\$ 448.05
July, 1931—		
Mathew Bender Co., Collier on Bankruptcy, 13th Ed., Vols. 4, and Sup.	50.00	
West Pub. Co., subscription to—		
N. W. Rep. Vols. 234-3	\$ 9.50	
N. E. Rep. Vols. 174	4.75	
S. W. Rep. Vols. 34, 5, 6	14.25	
S. E. Rep. Vols. 156-7	9.50	
Sou. Rep. Vol. 132	4.75	
Atl. Rep. Vol. 153	4.75	
Pac. Rep. Vols. 294-5-6	14.25	
Fed. Rep. Vols. 45-46	9.50	
Fed. Digest Vols. 31-54	7.50—	\$ 78.75
August—		
Bancroft-Whitney Co., Amr. Law Rep. Vols. 71 and 72	15.00	
Lawyers' Co-operative Pub. Co., 1931 Pocket Sup- to R. C. L. Perm.	10.00	
Burrell-Snow Inc., Formal Corporate Prac.	10.00	

September—

Bancroft-Whitney Co., Amr. L. Red. Vol. 73	7.50
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October—

Commercial Credit Co., Subscription to The Tax Magazine, 1 year	3.00
Lawyers' Co-operative Pub. Co., Ballentine's Pronouncing Law Dictionary	15.00
West Publishing Co., subscription to—	
N. W. Rep. Vol. 236	\$ 4.75
N. E. Rep. Vols. 175-2	9.50
S. W. Rep. Vols. 37-8-9 (d)	14.25
S. E. Rep. Vol. 158	4.75
Sou. Rep. Vols. 133-4	9.50
Atl. Rep. Vol. 154	4.75
Pac. Rep. Vols. 297, 298, 299	14.25
Fed. Rep. Vols. 47-8-9 (2)	14.25
Current Digest	10.00—\$
	86.00

December—

The American Law Book Co., Corpus Juris, Vol. 55	7.50
Bancroft Whitney Co., American Law Reports, Vol. 74	\$ 7.50
U. S. C. A. Service 1 year	16.00—
	23.50

TOTAL	\$ 306.25
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January, 1932—

West Publishing Co., subscription to—	
N. W. Rep. Vol. 237	\$ 4.50
N. E. Rep. Vol. 177	4.75
S. W. Rep. Vols. 40-41 (2)	9.50
S. E. Rep. Vol. 159	4.75
Sou. Rep. Vols. 135-6	9.50
Atl. Rep. Vol. 155	4.76
Pac. Rep. Vol. 300	4.75
Pac. Rep. Vols. 1 and 2 (2)	9.50
Fed. Rep. Vols. 50-51 (2)	9.50
Fed. Digest, 46-50	2.50—\$
	64.25

Bancroft-Whitney Co., Amr. Law Rep. Vols. 75-76	15.00
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February—

The Frank Shepard Co., subscription for Quarterly Cumulative Supplements Sheard's U. S. Citations, 1 year beginning Jan., 1932	14.00
The Mathew Bender & Co., Collier on Bankruptcy, Key Supplement, 1932	7.50
Supt. of Documents, U. S. Government Printing Office, 15th Census U. S. Agri., Vol. 1	2.00

March—

The Mathew-Bender & Co., Jones' Forms, Volume 1	15.00
Supt. of Documents, U. S. Government Printing Office, 15th Census U. S. Unemployment, Vol. 1	1.75

April—

The Mathew-Bender Co., Elliott on Roads and Streets, 2 Volumes	20.00
Bancroft-Whitney Co., A. L. R. Digest Service 1931	5.00
The Frank Shepard Co., Shepard's Florida Citations (2 sets) 1 yr. beginning February, 1932	14.00
The Bobbs-Merrill Co., 1932 Sup. to Florida Digest, Anno. 2 sets,,	\$30.00
Subscription to Pamphlet Supplement to U. S. Code Unannotated, to Dec., 1932 3.00—	33.00

West Publishing Co., subscription to—

N. W. Rep. Vols. 238-9	\$ 9.50
N. E. Rep. Vol. 178	4.75
S. W. Rep. Vols. 42-3 (2)	9.50
S. E. Rep. Vol. 160	4.75
Sou. Rep. Vol. 137	4.75
Atl. Rep. Vol. 156	4.75
Pac. Rep. Vols. 3-4-5 (2)	14.25
Fed. Rep. Vols. 52-3 (2)	9.50
Current Digest, Vol. 7	10.00
Sou. Digest—Pocket Parts 1931, 2 sets 20.00—	91.75

The Harrison Co., 3 copies 1932 Cumulative Supplement to C. G. L. of 1927, \$20.00 each	60.00
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June—

Lawyers' Co-operative Pub. Co., subscription to—

U. S. Rep. Vol. 75	7.50
U. S. Adv. 1931	3.00
1932 Pocket Supplement U. S. Digest	2.50
1932 Pocket Supplement R. C. L. Permanent	10.00—
	23.00

The U. S. Government Printing Office, 15th Census U. S. Population, Vol. III, Part I	3.25
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TOTAL\$ 369.50

July—

West Publishing Co., subscription to—

N. W. Rep. Vols. 240-1	\$ 9.50
N. E. Rep. Vol. 179	4.75
S. W. Rep. Vols. 44-5-6	14.25

S. E. Rep. Vols. 161-2	9.50	
Sou. Rep. Vols. 138-9-140	14.25	
Atl. Rep. Vols. 157-158	9.50	
Pac. Rep. Vols. 6-7-8	14.25	
Fed. Rep. Vols. 54-55 (2)	9.50	
Fed. Digest 46-55	3.50—	89.00
Bancroft-Whitney Co., A. L. R. Vols. 77-78		15.00
United States Government Printing Office, 15th Census U. S. 1930, Agri., Vol. 2, Part 3		1.75
Ed. R. Bentley, 2 copies 1931 Chancery Act., Anno- tated, cloth binding		5.00
August—		
The Lawyers' Co-operative Pub. Co., L. R. A. Green Book		5.00
September—		
American Law Book Co., Corpus Juris Annotations, 1932		8.00
United States Printing Office, 15th Census, U. S. Agri. Vol. II, Part I		3.00
American Legislators' Association, subscription to The State Government for 1 year, April, 1932, to 1933		2.50
October—		
West Publishing Co., subscription to—		
N. W. Rep. Vol. 242	\$ 4.75	
N. E. Rep. Vol. 180	4.75	
S. W. Rep. Vols. 47-8-9	14.25	
S. E. Rep. Vol. 163	4.75	
Sou. Rep. Vol. 141	4.75	
Atl. Rep. Vol. 159	4.75	
Pac. Rep. Vols. 9, 10, 11	14.25	
Fed. Rep. Vols. 56-57	9.50	
Current Digest, Vol. 8	10.00—	71.75
Bancroft-Whitney Co., A. L. R. Vol. 79		7.50
Commerce Clearing House, Inc., 1 year subscrip- tion to The Tax Magazine		3.00
United States Government Printing Office, 15th Census U. S. Agri. Vol. II, Part 2		3.50
The Harrison Book Co., Rebinding C. G. L., Vol. 3		1.00
November—		
The Bobbs-Merrill Co., 1932 Supplement to CYC, Fed. Procedure	\$10.00	
1932 Supplement to U. S. Code, Com- pact Edition	5.00—	15.00
TOTAL		\$ 231.00
TOTAL spent from January 1, 1931, to December 30, 1932		\$ 1,354.80

COMPILED STATEMENT OF BOOK ACCOUNT

Balance on hand January 1, 1931	\$ 484.43
Appropriation for 2 years from July 1, 1931, to July 1, 1933	1,500.00
TOTAL	\$ 1,984.43
TOTAL amount expended to December 30, 1932	1,354.80
BALANCE to cover purchases to June 30, 1933	\$ 629.63

ITEMIZED STATEMENT

OF EXPENDITURES OF ATTORNEY GENERAL FROM APPROPRIATION FOR
OFFICE EQUIPMENT, ETC.

August, 1931—

H. & W. B. Drew Co., Shaeffer Pen for Attorney General\$ 10.00

October—

Tallahassee Office Supply Co., Transfer Docket\$3.00

Catalog for Library Books, Index and Filler 3.40 6.40

Leon Weater, two days' service arranging books in Library 3.00

Tallahassee Office Sup. Co., Index for Transfer Docket 2.75

November—

T. J. Appleyard, Inc., Library Table 38.00

February, 1932—

J. H. Churchwell Wholesale Co., 42 yards carpet for Library 69.30

March—

Clark Furn. Co., Labor placing carpet in Library 8.00

Dixon's Transfer Co., Drayage and freight on bundle of carpet 1.89

April—

Cincinnati Office Supply Co., 10 boxes Bostitch staples and
Machine 20.00

May—

Bradbury & Hall, L. C. Smith Typewriter 77.65

Adams Studio, Enlarging and Framing General Hogue's photo-
graph 15.00

June—

Remington Rand Inc., Remington Noiseless Typewriter 94.00

Marlow & Iwaya Co., 12 boxes of carbon 22.94

August—

The H. & W. B. Drew Company, 5,000 embossed letter heads,
5,000 envelopes, 1,000 plain continuation sheets 98.40

TOTAL amount expended\$467.03

COMPILED STATEMENT OF OFFICE EQUIPMENT
ETC., ACCOUNT

Appropriation for two years from July 1, 1931, to June 30, 1933	\$800.00
Total Amount expended to January 1, 1933	467.33
Balance to cover purchases to June 30, 1933	\$332.67

X.**COMPILED STATEMENT OF ALL CASES HANDLED
FROM JANUARY 1, 1931, TO JANUARY 1, 1933****CIVIL CASES**

Number on Docket January 1, 1931	97
Number docketed from January 1, 1931, to January 1, 1933	170
	267
Number handled and disposed of	169
Still pending	98

QUO WARRANTO

Number authorized to be instituted	63
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CRIMINAL CASES

Number on Docket January 1, 1931	68
Number docketed from January 1, 1931, to January 1, 1933	267
	335
Number handled and disposed of	242
Still pending	93

NOTE—For detailed information with reference to the above cases, see the Schedules following numbered "X," "XI," and "XII."

**STATEMENT SHOWING COMPARISON OF CASES
HANDLED FOR SIX-YEAR PERIOD**

	1927-1928	1929-1930	1931-1932
Civil cases	103	209	267
Quo Warranto cases	45	60	63
Criminal	339	321	335
	487	590	665

XI.

SCHEDULE OF CIVIL CASES

In the District Court of the United States, Southern District of Florida

William G. Alkazin, Plaintiff, vs. A. S. Wells, et al., constituting Florida Railroad Commission, et al., Defendants.

The purpose of this suit was to enjoin the defendants from enforcing the provisions of Chapter 13700, Acts of 1929, and praying that said Act be declared to be in contravention of the rights of plaintiff under the 14th Amendment to the Constitution of the United States, the Commerce Clause of Art. I, Sec. 2, and Article IV of the Constitution of the United States, and the Federal Aid Act on January 1, 1931. A temporary restraining order was granted, and the Court ordered that the matter be taken under advisement, with leave to parties to file additional pleadings, etc. On January 5, 1931, an Order was made decreeing that the temporary restraining order be released and suit dismissed.

Circuit Court, Pinellas County

Lester F. Allen, Complainant, vs. Sarah C. Pipkin, et al., Defendants.

This is a suit brought for the purpose of foreclosing a certain mortgage covering property in Pinellas County, upon which property the Bank of Clearwater, at the time of closing, held a second mortgage. No Liquidator having been appointed for said bank, the Comptroller was therefore made a party. Final Decree entered in this case on November 13, 1931.

Circuit Court, Dade County

Will Allen, Complainant, vs. Guardian Trust Company, et al., Defendant.

A Bill of Complaint was filed in this suit charging fraud and mismanagement of the City Trust Company and its assets, and alleging an attempted voluntary liquidation of the City Trust Company under Section 6144 of the R. S., and alleging the dissipation of its assets in connection therewith, and alleging a transfer and sale of the assets of the City Trust Co. to the Guardian Trust Co., etc. The Bill prayed for an equity Receiver and such was appointed by the court on May 8, 1931. The Comptroller, who had appointed Liquidators for both Companies intervened, filed his motion to dismiss upon the ground of lack of jurisdiction, etc., which motion was denied. The State of Florida on the relation of the Attorney General filed an original prohibition proceedings against the lower court, and on May 22, 1931, rule nisi issued out of the Supreme Court and was directed to the lower court and the complainant below. The Supreme Court determined that the lower court was without jurisdiction to appoint a Receiver for the Guardian Trust Company, and peremptory writ issued.

In the Circuit Court, Dade County

Amelia Corporation, a Florida Corporation, Complainant, vs. E. B. Leath-
erman, as Clerk of the Circuit Court, Defendant.

A bill for injunction was filed here in praying that the defendant be enjoined and restrained from holding or attempting to conduct a sale of all tax certificates for the year 1927 (unpaid taxes for 1926) and subsequent omitted years, which have been issued against lands of your Orator for non-payment of State and County taxes for said year, etc. Demurrer to Bill was filed and sustained, whereupon appeal was entered to the Supreme Court, where the decree of the lower court was affirmed on May 17, 1931.

In the Circuit Court, Leon County

American Agricultural Chemical Co., et al., Complainants, vs. Nathan Mayo,
as Commissioner of Agriculture, Defendant.

This was a suit brought for the purpose of restraining and enjoining the defendant from interfering with the complainants in manufacturing, importing, transporting, distributing, storing, keeping, offering for sale and selling their fertilizer in the State of Florida, etc., and from further prosecuting or threatening to prosecute complainants and forcing the complainants to comply with Chapter 14510, Acts of 1929. Answer and demurrer on behalf of the defendant were filed. On March 12, 1930, order overruling demurrer was filed, whereupon an appeal was taken to the Supreme Court where the order of the lower court was affirmed on April 22, 1931.

In the Supreme Court of the United States

American Fruit Growers, Inc., Petitioners, vs. Brogden Company, Respondent.

Respondents herein instituted suit in the United States District Court for the District of Delaware for infringement of United States Letters Patent No. 1,529,461, issued March 10, 1925, to Ernest M. Brogden and Miles L. Trowbridge on an application filed August 15, 1923. The bill charged the petitioners with infringement of certain process claims and article claims. On motion, the Attorneys General of Alabama, Arizona, California, Florida, Georgia, Louisiana and Texas were allowed to file briefs as Amici Curiae. Judgment was entered in the lower court for the Respondent herein, whereupon an appeal was taken to this Court, where such judgment was reversed on March 2, 1931.

In the Supreme Court of Florida

Ernest Amos, as Comptroller, et al., Complainants, vs. Burwell & Sibley,
Appellees.

The Appellees here filed their petitions in the Circuit of Dade County in *re* Allen vs. Guardian Trust Company, wherein it was prayed that an attorney's fee be allowed and paid out of the assets of said Trust Company, before the delivery thereof to the Comptroller and his Liquidator. The Court de-

creed that such fees be allowed and taxed against and paid out of the assets of said Trust Company, from which order an appeal was entered to the Supreme Court, where the Decree of the lower court was affirmed.

In the Supreme Court

Ernest Amos, as Comptroller, et al., Complainants, vs. Henry H. Taylor and Lilburn R. Railey, Appellees.

The Appellees here filed their petition in the Circuit Court of Dade County in Allen vs. Guardian Trust Company before the Entry of any Order on the Petition of the Comptroller and liquidator for the delivery to them of the assets of said Company, praying an allowance of compensation as Receiver and Attorney, respectively, and praying that the same be allowed and paid out of the assets of the Guardian Trust Company before the delivery thereof to the Comptroller and his liquidator. An order was made allowing the compensation as prayed, from which ruling an appeal was entered to the Supreme Court where the order of the lower court was affirmed.

District Court of the United States, Northern District of Florida

A. M. Anderson, as Receiver of the First National Bank of St. Petersburg, Complainant, vs. Board of Public Instruction, Pinellas County, and Ernest Amos, as Comptroller, Defendants.

A bill of complaint was filed herein praying that a restraining order be entered prohibiting the defendant, Ernest Amos, as Comptroller, from delivering or causing to be delivered certain warrants to the defendant Board of Public Instruction for Pinellas County, and that said Board be enjoined and restrained by an order of this Court from selling warrants in said bill described, and that an order be entered directing that plaintiff be allowed to set-off said warrants of the said Board, or such part as may be necessary to fully liquidate the indebtedness owing by the First National Bank of St. Petersburg now pledged to said Board. The set off prayed for was ordered on June 30, 1931, and it was further decreed that said sum be declared paid in full; that the defendant, Ernest Amos, Comptroller, forthwith deliver to the Board of Public Instruction certain warrants in said order enumerated.

District Court of the United States, Northern District of Florida

T. J. Appleyard, Inc., Bankrupt.

A claim was filed in this matter wherein it is shown that said Bankrupt is indebted to the State of Florida in the sum of \$1,692.15. Still pending.

In the Supreme Court of Florida

Atlantic Coast Line Railroad Co., Complainant, vs. State ex rel. Fred H. Davis, Attorney General, et al., Defendants.

This is a suit which involved the question of the removal of the Monticello Depot. A peremptory writ of mandamus was issued. On January 7,

1932, the Court ordered that said peremptory writ be recalled. On February 25, 1932, a petition for a rehearing was filed praying to set aside and vacate said judgment, which said petition was denied.

Circuit Court, Leon County

Atlantic Coast Line R. R. Co., Complainant, vs. Ernest Amos as Comptroller, Defendant.

This suit was brought in an effort to enjoin the collection of Special District Taxes, Marion County. Pending on general replication and exceptions to answer.

Circuit Court, Leon County

Atlantic Coast Line R. R. Co. Complainant, vs. Ernest Amos as Comptroller, Defendant.

This is a suit brought to enjoin the Comptroller from the issuance of his warrant for the collection of the 1927 and 1928 taxes levied by the Caloosahatchee Improvement District in Lee County upon the properties of said railroad. Judgment was rendered in favor of defendant on December 19, 1930, and an appeal was taken from such judgment. On March 10, 1932, the Supreme Court dismissed the appeal at the cost of the Complainant.

Circuit Court, Osceola County

Atlantic National Bank of Jacksonville, Complainant, vs. J. Wade Tucker, et ux, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage. It is alleged in the bill that the State Bank of Haines City recovered a judgment against Tucker in the sum of \$2,310.56 and costs; that said bank has since closed its doors; that no liquidator has been appointed for said Bank, and that the title and right of possession of the assets of said bank is in Ernest Amos, Comptroller, one of the defendants. Pending on motion for rehearing.

Circuit Court, Leon County

Atlantic Coast Line R. R. Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This is a suit seeking to enjoin and restrain the collection of certain taxes claimed to be due for the year 1930. An answer on behalf of the defendant was filed, and argument had before Judge Love on January 8, 1932, on application for a temporary injunction. No decision.

Circuit Court, Leon County

Atlantic Coast Line R. R. Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

By this suit the Complainant seeks to enjoin and restrain the collection of certain taxes claimed to be due for the year 1931. Pending on motion to dismiss the Complainant's bill.

Circuit Court, Dade County

Louis C. Becker, Complainant, vs. Ernest Amos, as Comptroller, et al., Defendants.

The complainant here was seeking an injunction against Ernest Amos as Comptroller and E. P. Duncan as Liquidator of the Southern Bank & Trust Co., restraining them from paying out as preferential claims certain sums to individuals holding cashier's checks and others who had not collected their proportionate share under the depositor-creditors freezing agreement entered into subsequent to the closing of the said bank and before the re-opening thereof. The Court entered its order on November 3, 1931, denying the injunction from which ruling the complainant appealed, and on May 3, 1932, the Supreme Court handed its decree affirming the decision and order of the lower court denying complainant the relief sought.

Circuit Court, Dade County

Biscayne Company, et al., Complainants, vs. A. O. Henderson and Trustees I. I. Fund, Defendants.

This is a suit brought for the purpose of having cancelled the sale of bay bottoms by the Trustees of the I. I. Fund to the Defendant, A. O. Henderson. Pending on answer for both defendants.

Circuit Court, Leon County

Mary V. Blue, doing business as Blue's Truck Line, etc., Plaintiff, vs. E. S. Matthews, Chairman, Mamie Eaton Greene, and Tucker Savage, as and constituting the Railroad Commission of the State of Florida, Defendants.

This in effect is a suit to test the constitutionality of Chapter 14,764, Acts of 1931, as applied to contract carriers. Answer of the Defendants was filed. On October 25, 1932, a motion was filed to dissolve the restraining order theretofore granted, which motion was granted and the suit dismissed on October 11, 1932.

Circuit Court, Leon County

Board of Public Instruction of Dade County, Complainant, vs. W. V. Knott, as State Treasurer, and Ex-Officio-Insurance Commissioner, etc., Defendants.

A bill of complaint was filed herein praying that a restraining order be granted enjoining the said W. V. Knott from making payment to any person on any claim against the Southern Surety Company, etc. An answer on behalf of Mr. Knott was filed. A temporary restraining order was granted with certain modifications, from which modifications an appeal was entered, whereupon the Supreme Court, on October 1, 1932, affirmed the judgment of the lower Court.

District Court of the United States, Southern District of Florida

John W. Bowden, et al., Complainants, vs. The Citizens Bank & Trust Company, et al., Defendants.

On the 6th day of February, 1930, the Receiver appointed in this cause filed his report representing in substance that the affairs of the corporations committed to him as Receiver are so interwoven with the affairs of the Citizens Bank & Trust Company as to be inseparable therefrom, therein asking for an extension of the receivership in this case so as to embrace the said Bank, thereupon C. L. Knight, as liquidator of the Citizens Bank & Trust Company was ordered by the Court to show cause why a further decree should not be made extending the said receivership so as to embrace the affairs and assets of the said Citizens Bank & Trust Company. A motion to dismiss was filed by the Attorney General. An order was entered wherein it was decreed that the said Rule to show cause be vacated and discharged.

Circuit Court, Orange County

M. C. Britt Corporation, Complainant, vs. P. H. Britt, et al., and Ernest Amos, as Comptroller, Defendants.

This is a mortgage foreclosure suit, the Comptroller having been made a party by reason of certain interest in the bill of complaint alleged. A decree for complainant was rendered, property sold, and order confirming sale entered July 4, 1932.

Circuit Court, Leon County

Brooksville & Inverness Railway Company, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of School District Taxes for the year 1926. Testimony was taken, brief filed and argument had before Judge Jones on July 22, 1930, but thus far no decision has been rendered.

United States District Court

J. W. Buchanan, Appellant, vs. J. S. Blitch, Supt., Appellee.

A petition for writ of habeas corpus was filed in this case, wherein an attack was made upon the constitutionality of Chapter 9169, Laws of Florida, Acts of 1923, relating to the manner and means of inflicting punishment of death. An order was entered on December 9, 1931, denying the Petition, from which ruling an appeal was taken to the United States Circuit Court of Appeals where the judgment of the lower court was affirmed on April 1, 1932.

Circuit Court, Polk County

Mrs. C. A. Buggs, Complainant, vs. Sarah C. Pipkin, et al., Defendants.

This is a mortgage foreclosure suit, the State being interested only to the extent of a certain judgment in said Bill of Complaint mentioned. An

answer for the State was filed. Final decree was entered and sale confirmed on April 8, 1931.

District Court of the United States, Southern District of Florida

Burnet-Clark, Ltd., Bankrupt.

A claim was filed in this matter wherein it is shown that said Bankrupt is indebted to the State of Florida and the County of Palm Beach, in the sum of Seventy-eight Dollars and Fifty-six Cents, for taxes due. Check in full was received by the Comptroller on December 22, 1932, and matter closed.

Circuit Court, Leon County

Capital City Bank of Tallahassee, Complainant, vs. R. A. Davis, et al., Defendants.

This is an action brought wherein complainant prays that it be decreed to have a first lien in a certain amount found to be due the said contractors; that the National Surety Company be enjoined and restrained from asserting any right or claim to said funds as against your orator; and that the said Board of Control be enjoined and restrained from making any payments to said surety company of any funds found to be due and payable to the said contractors, etc. Appearance on behalf of the State Board of Control was filed, also a demurrer. An amendment to the bill was filed, and the Court allowed complainant to dismiss as to the Board of Control, and also permitted complainant to make the State Comptroller and Treasurer parties defendant. No summons in chancery has been served on these two last named defendants.

United States District Court, Jacksonville Division, Southern District of Florida

Hubert William Carcaba, et al., Plaintiffs, vs. M. G. McNair, Receiver of First National Bank of St. Augustine, et al., Defendant.

A bill of complaint was filed in this suit wherein it was prayed that this Court decree the right of plaintiffs in certain moneys collected by said Bank as Trustee, and that for the payment thereof plaintiffs have a lien upon certain bonds and securities deposited with the State Treasurer under the Trust Act of 1929, etc. Answer of Mr. Knott, State Treasurer, was filed on July 24, 1930. Case was argued and submitted on October 6, 1932, but no decision has been announced.

Circuit Court, Monroe County

Doyle E. Carlton, Governor, for the use and benefit of Monroe County, Plaintiff, vs. Enslow Sawyer, Charles W. Sawyer and Rogelio Gomez, Defendants.

This is a civil action brought in an effort to recover damages from defendants by reason of the forfeiture of a bond given in a certain cause pending in the Criminal Court of Record in and for Monroe County. Judgment for defendants, from which judgment an appeal will be entered.

Circuit Court, Palm Beach County

Central Farmers' Trust Co., Complainant, vs. W. H. Tunnicliffe, as Receiver of First American Bank & Trust Company, and Ernest Amos, as Comptroller, Defendants.

The Complainant in this suit prayed in its bill of complaint that it be decreed to have a preferred claim, etc., also prayed that said defendants be prohibited, enjoined and restrained from paying all or any part of the claims of creditors of said First American Bank & Trust Company, etc., until full payment of their claim, etc. Final decree for complainant was entered on December 22, 1932.

Circuit Court, Leon County

Central Florida Lumber Company, Complainant, vs. R. A. Gray, Secretary of State, Defendant.

This suit was brought to test the constitutionality of Senate Bill No. 734, now Chapter 14677, and Senate Bill No. 127-XX, now Chapter 15726, Acts of 1931. The Attorney General filed a Motion to dismiss the Bill of Complaint, stating, among other things, that the laws in question were valid statutes and asking that the suit be dismissed. On the 10th day of December, 1931, the Court issued its Interlocutory Order overruling and denying defendant's motion, to which ruling the case was appealed to the Supreme Court where the judgment of the lower court was reversed. A petition for writ of certiorari was filed in Supreme Court of the United States on August 6, 1932, where said petition was denied on October 17, 1932.

Circuit Court, Leon County

Charlotte Harbor & Northern Railway Company, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of School District Taxes for the year 1926. Testimony was taken, briefs filed and argument had before Judge Jones on July 22, 1930, but thus far no decision has been rendered.

Circuit Court, Duval County

Citizens Loan Association, Complainant, vs. James E. Stone, et al., Defendants.

This is a mortgage foreclosure suit, the State being made a party by virtue of certain final judgments duly entered against the defendant, J. E. Stone, in the Civil Court of Record in and for Duval County. A formal answer was filed on behalf of the State. Final decree entered, and an order confirming final report of Special Master was entered on June 21, 1932, and case finally disposed of.

United States District Court, Northern District of Florida

City Grocery Co., et al., Complainants, vs. State Road Department, et al., Defendants.

A bill for an injunction was filed in this suit praying that the defendants be restrained and enjoined, provisionally and preliminarily, from interfering with complainants in the operation of their motor trucks where the gross weight of each truck and cargo does not exceed 24,000, and further praying that a certain part of Chapter 15625, Acts of 1931, be decreed to be unconstitutional and void and of no effect at law. A temporary restraining order was issued. On July 30, 1932, an order was entered by a three Judge Court denying the application for an interlocutory injunction, whereupon a motion to dismiss was filed by defendants.

Circuit Court, Dade County

City of Coral Gables, Complainant, vs. W. S. McLin, Commissioner of Motor Vehicles of the State of Florida, Defendant.

This is a suit brought in an effort to restrain and prohibit the Defendant from interfering in any way with the motor vehicles of the Complainant, which motor vehicles were used in the transportation of passengers for hire, and upon which motor vehicles no for hire license tax had been paid. Answer for Defendant was filed on May 4, 1931. Also motion to dissolve Temporary injunction. On May 22 an order was entered dissolving the injunction, and dismissing the bill.

Circuit Court, Duval County

City of Jacksonville, et al., vs. W. B. Cahoon, as Sheriff, Duval County, Defendant.

A bill for injunction was filed in this case wherein it is alleged that a certain order issued by the Comptroller, and a purported writ of execution also issued by him are null, void and of no effect, and that Chapter 15658, Laws of Florida, Acts of 1931, does not provide for or authorize the making of said order, etc., it being prayed that a temporary restraining order and an injunction may be issued herein, restraining and enjoining the defendant from levying upon the electric light plant of the plaintiff, and from selling the same, or from anywise interfering therewith, and that the Court upon final hearing will declare the said order and execution now in the hands of the defendant to be null and void and of no effect, and will decree the temporary injunction to be perpetual.

Circuit Court, Leon County

City of Lakeland, Florida, et al., Complainants, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought for the purpose of testing the validity of Chapter 15658, Acts of 1931, which law imposes a tax upon all corporations, firms and individuals receiving payment for electricity or light, heat or power and

for natural or manufactured gas for light, heat or power and for the use of telephones and for the sending of telegrams, etc. A motion to dismiss was filed on behalf of the defendant, which motion was granted on April 7, and suit ordered dismissed, from which ruling an appeal was entered in the Supreme Court, where the judgment of the Circuit Court was affirmed on October 1, 1932.

Circuit Court, Dade County

City of Miami, Complainant, vs. State of Florida, Defendant.

This was a suit brought to validate a certain bond issue. On February 25, 1931, a decree was entered validating said Refunding Bonds, whereupon the case was appealed to the Supreme Court, and the judgment of the lower court was affirmed on October 13, 1931.

Circuit Court, Dade County

City of Miami, a Municipal Corporation, Petitioner, vs. Charles S. Thompson and his wife, Mary A. Thompson, et al., and W. V. Knott, Treasurer of the State of Florida, Defendants.

This is a condemnation proceeding wherein the City of Miami proposes to take over certain property for public purposes, and upon which property the State of Florida and the County of Dade have a claim and lien by reason of the unpaid taxes assessed thereon. Answer of W. V. Knott was filed. Final Decree for Complainant.

Circuit Court, Highlands County

City of Sebring, Complainant, vs. Ed. Wolf, et al., and Ernest Amos, as Comptroller, Defendants.

The bill of complaint in this case prayed that certain tax certificates be set aside and cancelled. Demurrers and motions to dismiss were filed, and the Court on January 11, 1932, granted said motions.

Circuit Court, Polk County

William T. Cleveland, Complainant, vs. Will H. Streater, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Polk County in which the State of Florida had acquired an interest by reason of some prior judgment, etc. A formal answer was filed on behalf of the State of Florida. Decree of foreclosure was entered and property sold, but the amount realized was not sufficient to apply on State's judgment.

Circuit Court, Manatee County

H. V. Coarsey, Plaintiff, vs. State of Florida, Defendant.

This suit was brought seeking to recover damages for personal injuries received by the plaintiff while traveling an unfinished highway then under construction by the State Road Department. A judgment for the plaintiff

was entered, from which an appeal was taken to the Supreme Court, where the judgment of the lower court was reversed.

Circuit Court, Leon County

L. R. Cooper, doing business as Cooper Truck Line, et al., Complainants, vs. State Road Department of Florida, et al., Defendants.

A bill for injunction was filed in this case wherein it is claimed that the Complainants are, and each one is, an "Automobile Transportation Company," a "Certified Private Contract Carrier," under the definition and terms of Chapter 14764, Laws of 1931, and praying that the defendants and each of them be restrained and enjoined from interfering with complainants in the operation of their motor vehicles, etc. Pending.

Circuit Court, Manatee County

County of Volusia, State of Florida, for the use and benefit of P. F. Connelly, doing business as P. F. Connelly Paving Co., Plaintiff, vs. Southern Surety Company, a corporation, Defendant.

This is a matter wherein the Court entered its Order authorizing and directing the Treasurer of the State of Florida to dispose of securities of the defendant for the payment of final judgment. An Answer on behalf of the State Treasurer was filed wherein it was stated that the Order of this Court cannot be complied with so long as the injunctive Order of the Circuit Court of the Second Judicial Circuit of Florida in the case of Board of Public Instruction of Dade County vs. W. V. Knott, as State Treasurer, and Southern Surety Company, et al., remains in force.

Circuit Court, Hillsborough County

Cuesta Rey & Company, Complainant, vs. John A. Newsome, as Liquidator of the Citizens Bank & Trust Co., and Ernest Amos, as Comptroller.

A bill of complaint was filed in this suit wherein it was prayed, among other things, that complainant be subrogated to all the rights and lien possessed by the said United States, for the amount of a certain certified check, upon all the assets of the Citizens Bank and Trust Company, at the time of its failure, and that said amount be paid out of said assets in preference to any and all other claims, etc. Judgment for complainant was entered, from which judgment an appeal was entered to the Supreme Court where the judgment of the lower court was reversed on August 7, 1931.

Circuit Court, Polk County

S. T. Daugherty, Complainant, vs. J. D. Raulerson, as Clerk of the Circuit Court, and Ernest Amos, as Comptroller, Defendants.

This suit was brought in an effort to have a certain tax sale certificated cancelled, praying that this court declare the rights and privileges of Complainant under and by virtue of a certain receipt for taxes, and that de-

defendants be required to show cause why said tax sale certificate should not be cancelled, set aside and held null and void, and that said defendants be restrained from selling said tax sale certificate during the pendency of this suit. Demurrer was filed on February 17, 1931.

Circuit Court, Hillsborough County

Davis, Miller & Cobb, Inc., Complainants, vs. Willie Bryan, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Hillsborough County, the State being made a party on account of having a judgment on an Appearance Bond that affected the property involved. Appearance filed.

Circuit Court, Leon County

W. T. Davis, as Liquidator of the Citizens Bank of Madison, Complainant, vs. W. V. Knott, et al., Defendants.

This suit was brought seeking the return of securities pledged by the Bank to the Bond Trustees of Madison County to secure sinking funds deposited in the Bank, and asking for an accounting. Final Decree was entered on December 12, 1931, dissolving injunction and dismissing the bill, from which ruling an appeal was taken to the Supreme Court where the case is now pending.

Circuit Court, Dade County

Charles Deering, et al., Complainant, vs. A. O. Henderson, and Trustees I. I. Fund, Defendants.

This is a suit for cancellation of sale of bay bottoms by the Trustees I. I. Fund to A. O. Henderson. Pending on answer of the defendants.

Circuit Court, Duval County

George B. Dinsmore, Complainant, vs. Mary V. Blue, etc., Defendant.

This is an injunction suit involving Senate Bill No. 411, Chapter 14764, Acts of 1931, known as the Motor Bus Act. An application for intervention was filed by the Railroad Commission, which application was granted. An Answer on behalf of the Railroad Commission was filed on September 19, 1931. An order was entered holding that the carriers involved were in fact common carriers, and consequently not entitled to the injunctive relief sought.

Circuit Court, Palm Beach County

J. D. Dodge, et ux, Complainants, vs. Edward Ertel, et ux, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering certain property in Palm Beach County, the State being made a party by reason of some interest claimed in and to the property covered

by the mortgage sought to be foreclosed. Final Decree entered and property sold to satisfy said decree. Court held that lien of complainant was superior to that of the defendants.

United States District Court, Southern District of Florida, in and for Hillsborough County

Albert W. Doepke, as Receiver, etc., Complainants, vs. D. F. Canfield, Tax Collector, and L. T. Farmer, Clerk Circuit Court, Defendants.

This suit was brought upon the refusal of the Tax Collector of Highlands County to issue a tax receipt to the First National Bank of Sebring after its failure; the Attorney General being called upon to handle the matter in connection with Mr. J. M. Lee, County Attorney. Decree in favor of Complainant was rendered on September 13, 1932.

Circuit Court, Duval County

E. A. Durst, Complainant, vs. A. J. Cone, et al., Defendants.

This suit was brought for the purpose of foreclosing two certain mortgages aggregating the sum of \$4,200, the State claiming an interest by reason of a certain judgment against H. A. Halsema, one of the principal defendants herein. An answer on behalf of the State was filed November 3, 1930. Report of sale and disbursements approved by order confirming final report of Special Master filed July 17, 1931.

Circuit Court, Leon County

East & West Coast Railway Company, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of School District Taxes for the year 1926. Testimony was taken, briefs filed and arguments had, before Judge Jones on July 22, 1930, but thus far no decision has been rendered.

Circuit Court, Hillsborough County

Eli Witt Cigar Co., Complainant, vs. John A. Newsome, as Liquidator of Citizens Bank & Trust Company, and Ernest Amos, as Comptroller, Defendants.

A bill of complaint was filed in this suit, and in due course an appearance was filed on behalf of the Comptroller, one of the defendants named therein. The case was thereafter turned over to the Attorney for the Liquidator for further handling. Stipulation to compromise claim was filed and allowed by Court on January 28, 1932.

Circuit Court, Polk County

Randolph Eppes and F. J. Sattler, Complainants, vs. Sarah C. Pipkin, et al., Defendants.

This is a suit brought to foreclose a certain mortgage covering property in Polk County, the State being made a party by reason of a prior judgment

being of Record in Polk County in the sum of \$250.00 in favor of the State. A formal answer was filed. Final decree entered for complainants and sale confirmed August 5, 1931.

Circuit Court, Levy County

Federal Land Bank of Columbia, Complainants, vs. C. C. Epperson, et al, Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Levy County, the State being made a party by reason of some interest claimed in and to the property covered by the mortgage sought to be foreclosed. Answer for the State was filed.

Circuit Court, Taylor County

Federal Reserve Bank of Atlanta, Complainant, vs. Maud C. Calhoun, a widow, et al., Defendants.

This suit was brought for the purpose of foreclosing a mortgage covering property in Taylor County, the State Board of Administration having been made a party by reason of the fact that a certain note and mortgage was assigned to W. V. Knott, State Treasurer, as County Treasurer ex officio, etc.

Circuit Court, Palm Beach County

Fred E. Fenno, Clerk of the Circuit Court, Complainant, vs. Ernest Amos, as Comptroller, and Fred A. Gutelius, as Receiver of Farmers Bank & Trust Co., Defendants.

A bill of complaint was filed in this case wherein it was prayed that the Defendant, Fred A. Gutelius, as Receiver of the Farmers Bank & Trust Company, be required to refund to Complainant the sum of \$529,466.00 on deposit in trust with said bank, and that the Comptroller be required to make all orders necessary to such refund, and asking that a temporary restraining order be made, restraining and enjoining defendants from declaring and paying any dividend out of the assets in the custody of defendant. Fred A. Gutelius, as such Receiver, etc., until and when defendant Gutelius has made said refund in full to Complainant, and that upon final hearing such temporary injunction be made perpetual. Pending on joint and several answers of the defendants.

In the Supreme Court of Florida

Fidelity and Deposit Company of Maryland, Bondsman for Floyd Martin, Plaintiff in Error, vs. State of Florida, Defendant in Error.

This suit was instituted in the Circuit Court of Palm Beach County for bond estreature of one Floyd Martin, who had given a supersedeas bond in the sum of \$5,000, upon which the Fidelity and Deposit Company was surety. Judgment was rendered for the State, whereupon plaintiff in error appeals to the Supreme Court where said judgment was affirmed on October 9, 1931.

Circuit Court, Dade County

H. H. Filer, et al., constituting Board of Public Instruction of Dade County, Complainants, vs. Ernest Amos, as Comptroller, Defendant.

A bill of complaint was filed in this case in which it was alleged, among other things, that the Comptroller had in his possession and control the sum of \$48,000.00 United States bonds, and that the Comptroller will use and apply the same for and to the benefit of the general depositors of the Bank of Bay Biscayne unless he is restrained from doing so by the injunctive process of some court of competent jurisdiction, and praying that the court adjudicate and establish the rights of your orators and said Board, and also the Comptroller in and to said bonds, etc., and praying that the Comptroller be restrained and enjoined from in any way disposing of said bonds, etc. A petition for intervention was filed by Dr. J. H. Therrell and Miami Insurance Agency, Inc. Answers on behalf of all defendants were filed to which the School Board interposed a demurrer and Judge Thompson sustained such demurrers. Final decree for complainants was entered on November 2, 1931.

Circuit Court, Leon County

First National Bank of St. Augustine, M. G. McNair, Receiver, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

A bill of complaint was filed in this case wherein it was prayed that the defendant be compelled to allow the claim of the First National Bank of St. Augustine against the Farmers Bank & Trust Company of West Palm Beach, which was in the hands of the Comptroller as a preferred claim on the ground that said bank acted merely as a collecting agency for money to be remitted to the St. Augustine bank, making the amount of the collection a trust fund which did not pass to the Comptroller as an asset of the bank. Demurrer to the bill was filed and argued and was overruled. An answer was then filed. Final decree was entered in this cause on May 16, 1931, wherein it was ordered that the claimants named do have and recover of and from the defendants the sums mentioned in said decree.

Circuit Court, Sarasota County

Florida Automobile Owners' Protective Asso., Inc., et al., Complainants, vs. Walter S. McLin, State Motor Vehicle Commissioner, et al., Defendants.

This suit was brought in an effort to have declared null and void Chapter 15626, Acts of 1931, known as the Automobile License Tag 25% Penalty Law. An interlocutory order was entered from which ruling defendants entered their appeal to the Supreme Court, where judgment of lower court was reversed on April 19, 1932.

Circuit Court, Dade County

Florida Bond & Mortgage Co., as Trustee, Complainant, vs. E. P. Cathcart, et al., Defendants.

This is a suit brought to foreclose a certain mortgage covering property in Dade County, Mr. Amos having been made a party by reason of his statutory supervision of defunct banks. Order confirming sale was entered on August 29, 1931.

Circuit Court, Leon County

Florida Central & Gulf Ry. Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant. Case No. 2703.

A bill of complaint was filed in this suit wherein it was prayed among other things that the Defendant be enjoined and restrained from issuing serving or levying warrants, or any other writ, order or process, attempting to collect from Complainant certain taxes for the year 1929.

Consent decree was entered herein on December 30, 1931, taxes paid to the Comptroller and the suit dismissed.

Circuit Court, Leon County

Florida Central & Gulf Ry. Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant. Case No. 2938.

A bill of complaint was filed in this suit wherein it was prayed among other things that the defendant be enjoined and restrained from issuing, serving or levying warrants, or any other writ, order or process, attempting to collect from the Complainant certain taxes for the year 1930.

Consent decree was entered herein on December 30, 1931, taxes paid to the Comptroller and the suit dismissed.

Circuit Court, Leon County

Florida East Coast Ry. Co., Complainant, vs. Ernest Amos, Comptroller, Defendant.

A bill for injunction was filed in this case, wherein it was prayed that the Comptroller be enjoined and restrained from issuing, serving or levying his warrant, or other writ, order or process, attempting to collect from Complainant certain taxes assessed by the Town of Palm Bay, now known as Palm Bay District, in the County of Brevard. Now pending on demurrer to bill.

In the Supreme Court of Florida

Florida Power and Light Company, a corporation, Plaintiff in Error, vs. State of Florida, on the relation of Thomas J. J., Malcolm and Rose G. Hamel, by her husband and next friend, Louis J. Hamel, Defendants in Error.

This suit was instituted in the Circuit Court of Dade County by defendants in error in an effort to have installed in certain apartment houses

in the City of Miami a master meter for measuring gas and electricity, it being alleged that defendants in error proposed to purchase and resell gas and electricity to tenants. A verdict for defendants in error was rendered, whereupon plaintiff in error took an appeal to the Supreme Court where the judgment of the lower court was reversed on Nov. 25, 1932.

Circuit Court, Leon County

Florida Western & Northern Railroad Co., Complainant, vs. Ernest Amos, Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of School District Taxes for the year 1926. Testimony was taken, briefs filed and argument had, before Judge Jones on July 27, 1930, but thus far no decision has been rendered by the Court.

Circuit Court, Broward County

Fort Lauderdale Riparian Co., Complainant, vs. Fort Lauderdale Bank & Trust Co., et al., Defendants.

This suit was brought asking that an accounting be made by the Broward Bank & Trust Company, and Ernest Amos, and further to restrain the defendants from making disposition of the assets of the Fort Lauderdale Bank & Trust Company to common creditors or on preferred claims until such accounting is made. Pending on demurrer.

Circuit Court Dade County, Florida

James M. Fowler, Jr., Complainant, vs. Biscayne Point Realty Corp., et al., Defendants.

This is a suit brought for the purpose of foreclosing a certain mortgage, the State being made a party defendant because it claimed some interest in and to the land covered by said mortgage sought to be foreclosed.

Final decree for complainant entered February 27, 1931.

Circuit Court, Orange County

Geo. P. Garrett, Plaintiff, vs. Ernest Amos, as Comptroller, Defendant.

This was a civil action brought in an effort to collect fees claimed to be due for matters handled at the request of W. H. Tunnicliffe, as Liquidator of the Bank of Winter Park, it being alleged that said Tunnicliffe was the agent of said Defendant.

Final judgment was rendered in this cause for the plaintiff on November 4, 1932.

Circuit Court Leon County

George P. Garrett, Plaintiff, vs. Ernest Amos, as Comptroller, Defendant.

This is a civil action brought in an effort to collect fees claimed to be due for matters handled for the defendant in the matter of the liquidation of the Bank of Okeechobee, P. Tomasello, Receiver, as set forth in full in the bill of particulars attached to the declaration.

Circuit Court, Polk County

Alexander Glass, Complainant, vs. George T. Spear, et al., Defendants.

This suit was brought to foreclose a mortgage covering property in Polk County, the state being made a party by reason of having secured a judgment dated the 8th day of March, 1927, on the bail bond against G. T. Spear and N. L. C. D'Milly in the amount of One Thousand Dollars. A formal answer was filed in behalf of the State.

Circuit Court, Dade County

Graves Investment Co., Complainant, vs. Marion Mortgage Company, and Trustees of the Internal Improvement Fund, Defendants.

This suit was brought to foreclose a State and county tax certificate on certain lands in Dade County against which there are outstanding Everglades Drainage District tax certificates. An appearance was filed for the Trustees on January 2, 1933.

Circuit Court, Leon County

W. V. Griffin and H. W. Purvis, Receivers of and for Georgia and Florida R. R., Complainants, vs. Ernest Amos, Defendant.

A bill for injunction was filed in this suit wherein it was prayed among other things that the defendant be restrained and enjoined from making any attempt whatsoever to collect from Complainants certain taxes alleged to have been illegally assessed for the years 1929 and 1931 against railroad property in certain taxing districts in Madison County. Answer for the Comptroller was filed. Final decree was entered on Dec. 29, 1932, wherein it was ordered that the sum of \$5,834.95 tendered into court with the bill of complaint be by the Clerk turned over to the Comptroller. Each party to pay his own costs. Suit dismissed.

Circuit Court, Polk County

J. L. Griffin, as Receiver of The First National Bank of Lakeland, Florida, Complainant, vs. Carl L. Odell, et al., Defendants.

A bill was filed in this suit for the purpose of quieting title to a tract of approximately fifty acres of land lying and being in the eastern part of the City of Lakeland, the State having been made a party by reason of a prior judgment against one E. H. Pipkin in favor of the State. An answer on behalf of the Governor and Attorney General was filed on April 6, 1931. Final decree for Complainant entered July 15, 1931.

Circuit Court, Duval County

Gulf Life Insurance Co., Complainant, vs. Louise Mathis, et al., Defendant.

This is a mortgage foreclosure suit, the State of Florida being made a party by reason of a prior lien held by said State for the use and benefit of Duval County. A formal answer was filed on behalf of the State in October, 1932.

Circuit Court, Hardee County

Alice Gurney, Complainant, vs. Ernest Amos, as Comptroller, and S. W. Conroy, as Clerk of the Circuit Court, Defendants.

A bill of complaint was filed in this suit wherein it was prayed that this Court inquire into the validity and equality of the tax assessment levied upon complainant's lands for the years 1927, 1929 and 1930, and that complainant be permitted to pay to the Clerk of the Circuit Court such sum or sums of money as the Court shall find to be due, etc. Demurrer and motion to dismiss was filed. On February 23, 1931, an order was entered overruling demurrer and sustaining motion.

Circuit Court, Dade County

Millard H. Hall and wife, Complainants, vs. H. W. Hecht, and Trustees I. I. Fund, Defendants.

This suit sought the cancellation of a tax deed based upon Everglades Drainage District Tax Certificate. Final decree was rendered in favor of complainant on July 18, 1932. An appeal will be entered.

Circuit Court, Palm Beach County

Harjim, Inc., a corporation, et al., Complainant, vs. Roy A. O'Bannon, as Tax Collector.

A bill for injunction was filed in this case wherein it was alleged a discrimination was made in the preparation of the tax roll for the year 1929, as prepared by the County Assessor of Taxes, and approved by the Board of County Commissioners of Palm Beach County. A petition for intervention was filed by the Comptroller, which was granted on June 23, 1930. A motion to dismiss was filed by the Comptroller on February 28, 1931, and an order granting said motion was entered in March 2, 1931.

United States District Court, Southern District of Florida

Harjim, Inc., a Florida Corporation, Complainants, vs. James M. Owens, as Tax Assessor of Palm Beach County, et al., Defendants.

A bill of complaint was filed in this case praying for an injunction and other relief against the publication of notice and sale of property for nonpayment of taxes assessed thereon for the years 1927, 28, 29 and 30, etc. A temporary injunction was granted. Upon final hearing it was decreed that the tax assessments for the years 1929 and 1930 were invalid and void, and that the injunction granted in so far as the taxes for said years are concerned be continued in full force and effect and made permanent. That so far as the taxes assessed for the years 1927 and 1928 are concerned the relief prayed for be denied, and the injunction granted against the collection of said taxes for said years be vacated and dissolved. Done and ordered on August 17, 1931.

Circuit Court, Dade County

Mrs. Annabelle Stephens Hartman, Complainant, vs. E. B. Leatherman, as Clerk Circuit Court, and Ernest Amos, as Comptroller, Defendants.

This is a suit to cancel certain tax certificates and to restrain the issuance of tax deeds on certain property in Dade County, the Comptroller having been made a party. A motion to dismiss has been filed on behalf of Defendant Amos.

Circuit Court, Broward County

Jamson C. Hart, as Executor, etc., Complainant, vs. City Bank of Fort Lauderdale, et al., Defendants.

This suit was brought for the purpose of having declared a preference in favor of the complainant in certain funds of the City Bank of Fort Lauderdale, which said funds are not in the hands of the State Treasurer. Answer for Mr. Knott, as State Treasurer, was filed.

Circuit Court, Polk County, Florida

Leo Haskell, et al., Complainants, vs. W. P. Juhlin, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Polk County, the State being made a party on account of a judgment obtained December 10, 1928, based upon an estreatment of a bail bond against W. P. Juhlin, one of the defendants hereto. A final decree was entered on January 23, 1931.

County Judge's Court, Hardee County

In Re: J. A. Hathaway, deceased, Estate of.

The duly appointed and qualified Administrator of the above estate filed his petition setting forth that the deceased had left no heirs at law and that the only person interested in said estate was the State of Florida, and therein praying that an order be made authorizing and directing said administrator to take possession and charge of the said estate for the purpose of paying off the debts of the deceased. An answer on behalf of the State was filed.

Circuit Court, Dade County

Caspar Hefty, Complainant, vs. Ranger Realty Co., et al., Defendants.

A bill of complaint was filed wherein it was prayed that a temporary restraining order be issued restraining defendants from receiving, issuing or causing to be issued a tax deed based upon the State and County Assessment for 1927 and upon a tax sale for 1927 State and County taxes and upon tax certificate No. 16756. An answer on behalf of the Comptroller was filed.

Circuit Court, Hillsborough County

Hensley Insurance Co., Complainant, vs. W. M. McCalley, Jr., et al., Defendants.

This is a mortgage foreclosure suit covering certain property in Hillsborough County—the State having been made a party by reason of a prior claim mentioned in the bill of complaint. A formal answer was filed on behalf of the State.

Circuit Court, Pinellas County

S. T. Hill, Complainant, vs. Trustees, I. I. Fund, et al., Defendants.

This suit involves bay bottom lands on which the Trustees I. I. Fund hold mortgage. Pending an answer.

Circuit Court, Duval County

Harry Hirschberg et al., Complainants, vs. Allen Bannister et al., Defendants.

This is a mortgage foreclosure suit—the State being interested only to the extent of a certain judgment in the bill of complaint mentioned. An answer for the State, for the use and benefit of Duval County was filed. Case settled by payment of the sum of \$1465.71, principal and interest, on March 5, 1931.

Circuit Court, Polk County

Chas W. Hoff, et al., Complainants, vs. W. H. Bussabarger et al., Defendants.

This was a mortgage foreclosure suit covering property in Polk County—the State being made a party on account of a prior judgment obtained by the State against one of the defendants. Final decree for complainants was entered on January 23, 1931, decree confirming and for deficiency filed July 17, 1931.

Circuit Court, Duval County

Charles H. Hoff, Complainant, vs. James J. Waters, et al., Defendants.

This is a suit brought to foreclose a mortgage covering certain property in Duval County, the State being made a party by reason of a prior judgment lien held by the State for and in behalf of Duval County. An answer has been filed on behalf of the State.

Circuit Court, Pinellas County

Allie L. Hollis, Complainant, vs. First National Bank of St. Petersburg, and W. V. Knott, State Treasurer, Defendants.

A bill of complaint was filed in this case wherein it was alleged that the First National Bank of St. Petersburg held the sum of \$50,000.00 in trust for the use and benefit of complainant, and that said bank had failed to carry out and perform the duties imposed upon it under said trust, etc.,

praying that this Honorable Court adjudicate and decree that complainant has a preferential claim against the securities held by W. V. Knott, as State Treasurer of the State of Florida in trust for the First National Bank of St. Petersburg to the amount of \$50,000 and interest. Order entered November 5, directing State Treasurer to deliver to the Receiver the securities named in the Bill.

U. S. District Court, Southern District of Florida, Miami Division

Joseph E. Illick, et al., Complainants, vs. Trust Company of Florida et al.
Defendants. Ernest Amos, et al., Interveners.

A bill for an accounting was filed asking for an account as to each trust involved, etc. The Comptroller took possession of the affairs and assets of the Trust Company in the meantime, and then by leave of the Court intervened in the cause, asserting his exclusive right under the Florida statute to the possession of the property and business of the Trust Company, that he would forthwith appoint a liquidator, and alleged that if there previously had been any occasion for a receiver in equity it no longer existed, etc. The Court overruled the Comptroller's contentions and appointed common receivers. The Comptroller set up that a liquidator had been appointed and confirmed and moved to dissolve the injunction and receivership so far as they applied to the business of the Trust Company of Florida. His motion was overruled and the case was appealed to United States Circuit Court of Appeals, the complainant assigning as error that a general receivership was not granted; the defendants contending that not any was granted, and the Comptroller contends that his control of the assets and affairs of the Trust Company of Florida was interfered with. The question of parties or pleadings was not passed on, but only that of receivership and injunction. The judgment of the lower court was reversed, with direction to dissolve the receivership and injunction so far as they affect the trusts and trust property in the hands of the Comptroller as assets and affairs of the Trust Company of Florida.

In the Supreme Court of Florida

Islands Incorporated, Complainant, vs. Trustees Internal Improvement Fund,
Defendant.

A petition for an alternative writ of mandamus was filed in this case wherein it was prayed that defendants be directed to pay the sum of \$21,400.25, balance due on land reconveyed to said defendants. Alternative writ issued, and a motion to quash was filed by the defendant. On May 25, 1932, the Court granted said motion to quash, whereupon a petition for a rehearing was filed, and on August 3, 1932, said petition was denied.

Circuit Court, Leon County

Jacksonville Gas Company, et al., Plaintiffs, vs. Ernest Amos, as Comptroller, Defendant.

A bill for an injunction was filed on September, 1932, wherein it was prayed that Chapter 15658, Acts of 1931, which law imposes a tax upon all

corporations, firms and individuals receiving payment for electricity or light, heat or power, and for natural or manufactured gas for light, heat or power, etc., be decreed to be void in so far as it affects or is legally binding upon the plaintiffs herein, and that the Comptroller be enjoined and constrained from enforcing the provisions of said law. Briefs have been filed and arguments presented, but no decision has been rendered by the Court.

Circuit Court, Hillsborough County

Carl Johnson, Plaintiff, vs. Doyle E. Carlton, as Governor, Defendant.

This is a suit brought to have a certain judgment set aside, said judgment having been rendered against the plaintiff herein as a bondsman for the appearance of one Herman Williams to appear in the Criminal Court of Record to answer a charge for assault with intent to murder. Answer on behalf of the Governor was filed.

Circuit Court, Dade County

Arthur N. Kennedy, Complainant, vs. Lloyd Saunders, Defendant.

This is a suit of unlawful entry and detainer, whereby it is sought to oust the defendant to whom the Trustees of the I. I. Fund had leased certain Okeechobee Lake bottom lands.

Circuit Court, Leon County

William H. Kelly, Commissioner of Banking and Insurance of the State of New Jersey, Complainant, vs. W. V. Knott, as State Treasurer and ex officio Insurance Commissioner of Florida, et al.

A bill of complaint was filed in this suit wherein it is alleged that the Defendant, W. V. Knott, is entrusted with certain securities in said bill described, and to the end that justice may be done it is prayed in order that all parties interested in the securities involved in this suit may have equity and justice done them that an accounting be had to ascertain the relative standing of the creditors entitled to participate in the funds described in the bill of complaint, and that by and under proper orders of the Court such payments shall be made. An appearance on behalf of Mr. Knott was filed on January 2, 1933.

Circuit Court, Dade County

Keystone Securities Corp., Complainant, vs. Miami Real Estate Company, et al., Defendant. No. 30655-B.

A bill of complaint was filed in this case and as shown in said bill this suit was brought for the purpose of having the Central Farmers' Trust Company confirmed as successor trustee to the Biscayne Trust Company. Appearance on behalf of the Comptroller. Final decree entered for complainant March 13, 1931.

Circuit Court, Dade County

Keystone Securities Corp., et al., Complainants, vs. N. E Second Avenue Co., et al., Defendants. (6 cases.)

A bill of complaint was filed in these cases, and as shown in said bill these suits were brought for the purpose of having the Central Farmers' Trust Company confirmed as successor trustee to the Biscayne Trust Company. Appearance on behalf of the Comptroller was filed. Final decree in each of these cases entered for complainant March 13, 1931.

United States District Court, Southern District of Florida

Barnard Kilgore, et al., Plaintiffs, vs. Nathan Mayo, as Commissioner of Agriculture, et al., Defendants.

This is a suit brought to test the constitutionality of Section 4 of Chapter 11844, Acts of 1927, as amended by Section 4 of Chapter 14485, Acts of 1929, also Chapter 14662, Acts of 1931—known as the Citrus Fruit Laws, and it was prayed, among other things, that defendants be enjoined and restrained from seizing and destroying any fruit grown upon plaintiff's groves mentioned in the bill of complaint. Answer and brief was filed on behalf of defendants. Upon final hearing Interlocutory Injunction was denied.

Circuit Court, Leon County

Kissimmee River Railway, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of school district taxes for the year 1926. Testimony was taken, briefs filed and argument had, but thus far no decision has been received from the Court.

Circuit Court, Citrus County

W. V. Knott, State Treasurer, et al., Complainants, vs. Royal Indemnity Company, Defendant.

A bill of complaint was filed in this cause wherein it was prayed that a receiver be appointed to take charge of certain securities referred to in said bill, with authority to collect the same, make sale thereof, or make such other disposition thereof as the court may direct, etc. A general demurrer to the bill was filed, which demurrer was overruled, from which ruling the case was appealed to the Supreme Court, where the judgment of the lower court was affirmed. A petition for rehearing was filed and granted, and upon final rehearing the judgment of the lower court was again affirmed.

Circuit Court, Citrus County

W. V. Knott, as Treasurer of the State of Florida, et al., Complainants, vs. G. I. Singleton, et al., Defendants.

A bill of complaint was filed in this cause wherein it was prayed that a receiver be appointed to take charge of certain securities referred to and

described in said sworn bill of complaint, with authority to collect the same, make sale thereof, or make such other disposition thereof as the court may direct, etc. Two interlocutory orders entered, one appointing a receiver and the other overruling the general demurrers of defendants, to which orders an appeal was entered, where the order of the lower court was affirmed.

Circuit Court, Alachua County

W. V. Knott, State Treasurer, as Treasurer Ex Officio of Alachua County, Complainant, vs. F. G. McIntosh, as Liquidator of Bank of Alachua, and Ernest Amos, as Comptroller, Defendants.

The bill of complaint in this case prayed, among other things, that the defendants be ordered and directed to pay to the complainants a sum of money equal to the ten per cent dividend payment made to those creditors who had filed their claims and to whom Liquidator's Certificate or Certificates had been issued prior to May 14, 1931. A temporary injunction was granted, and a motion was filed by the defendants to dissolve the injunction and dismiss the bill, which motion was denied, from which ruling an appeal was taken to the Supreme Court, where a peremptory writ of mandamus was granted on Jan. 2, 1933.

Circuit Court, Citrus County

W. V. Knott, as Treasurer of the State of Florida, et al., Complainants, vs. Citizens Bank of Inverness, and Ernest Amos, as Comptroller, Defendants.

This suit is a proceeding in equity for an accounting relating to the bond funds of Citrus County which are to be turned over to the State Treasurer under the 1929 law—the Comptroller having been made a party by reason of the fact that he had the supervision of the affairs of the defendant bank. Still pending.

Circuit Court, Polk County

Lakeland Building & Loan Ass'n, Complainant, vs. A. N. Johnson, et al., Defendants. 2 Suits.

These suits were brought for the purpose of foreclosing two certain mortgages covering certain property in Polk County, the State being made a party by reason and to the extent of a certain judgment held by it and described in the bill of complaint. Final decree for complainant.

Circuit Court, St. Johns County

Gazaway B. Lamar, et al., Plaintiffs, vs. Rosamond Cochrane Anderson, a Minor, et al., Defendants.

This is a suit brought for the purpose of having appointed a new trustee under the terms of the will of the late Andrew Anderson, the State Board of Education and the State Board of Control being made parties defendant by reason of the fact that the University of Florida is named as the contingent beneficiary. Order appointing Trustee March 11, 1932.

Circuit Court, Broward County

Lauderdale Harbors, Inc., Complainant, vs. Cape Cod Realty Company, Trustees I. I. Fund, et al., Defendants.

This suit involves the validity of a deed of the Trustees I. I. Fund given to W. C. Kyle covering certain islands.

Circuit Court, Leon County

D. Lee, Complainant, vs. Ernest Amos, Comptroller, Defendant.

A bill of complaint was filed in this case wherein it was prayed that the Comptroller be required to refund to the complainant a certain sum of money which he had paid for a tax sale certificate covering the unpaid taxes for the year 1927 on certain lands in Manatee County — it being claimed that said amount should not have been included in the cost of said certificate by reason of the fact that the taxes on certain parts of the lands described in said certificate had already been paid. An answer for the defendant was filed on January 2, 1932.

Circuit Court, St. Johns County

Charles Levyraz, Complainant, vs. C. C. Johnson as Liquidator Bankers Trust Co. of St. Augustine, and W. V. Knott, as State Treasurer, Defendants.

This suit was brought for the purpose of having a certain claim of complainant recognized and declared to be a preferred one against the assets in the hands of the liquidator, etc. A demurrer on behalf of the State Treasurer was filed, which demurrer was sustained, and thereupon application was filed by complainant to file an amended bill of complaint which motion was granted and amended bill was filed on July 25, 1931. A motion was filed on behalf of the State Treasurer to dismiss the amended bill, which motion was granted and bill dismissed on March 3, 1932.

Circuit Court, Palm Beach County — In Chancery

Liberty Finance Company, Complainant, vs. C. B. Fenn, et al., Defendants.

This suit was brought for the purpose of foreclosing a mortgage covering property in Palm Beach County, the State having been made a party by reason of a prior judgment obtained in a bond estreature suit. Order confirming sale and disbursements filed April 25, 1932.

Circuit Court, Leon County

Lois G. Liggett Company, et al., Complainants, vs. Ernest Amos, as Comptroller, et al., Defendants.

This suit was brought to test the constitutionality of the Chain Store Act — Chapter 15624, Acts of 1931. A petition for intervention was filed on behalf of Paxsoms, Inc. A motion to dismiss was filed on behalf of the defendants, which motion was granted with leave to file an amended

bill of complaint. An amended bill of complaint was filed and defendants again filed a motion to dismiss, which motion was granted and suit dismissed at the cost of complainants, from which ruling an appeal was taken to the Supreme Court where the judgment of the lower court was affirmed. Thereupon an appeal was entered in the Supreme Court of the United States where the case is now pending.

Circuit Court, Hendry County

Frederick D. Lichthardt, Complainant, vs. Fishiman, Trustee, Trustees I. I. Fund, et al., Defendants.

This suit is for specific performance and damages based on agreements to sell lands covered by mortgage to Trustees of the I. I. Fund.

District Court of the United States, Southern District of Florida

Lloyd-Skinner Development Company, a Corporation, Bankrupt.

There was issued in this case a rule to show why this court should not inquire into the amount due for state and county taxes for the years 1926, 1927, 1928 and 1929, respectively, from the properties involved and described in the petition of the trustee in bankruptcy. An answer on behalf of the Comptroller was filed. Upon hearing before Judge Baya the taxes in question were abated and were settled on that basis.

Circuit Court, Leon County

Louisville & Nashville R. R. Co., Complainant, vs. Ernest Amos, Comptroller, Defendant.

This is a suit brought seeking to enjoin the collection of taxes due on certain property of complainant for the year 1930, and was settled upon agreement on September 18, 1931, by payment of balance of personal property tax, and the entry of final decree enjoining the collection of the balance of the real estate tax, to-wit: One third.

Circuit Court, Leon County

F. E. Markel, et al, Complainants, vs. Ernest Amos, as Comptroller, et al., Defendants.

A bill for injunction was filed herein and it was therein prayed that this Court restrain the Comptroller from approving the sale of certain tax certificates on lands in said bill described. It was further prayed that James R. Jackson, as Clerk of the Circuit Court of Taylor County, one of the defendants, be restrained from delivering certain tax certificates in said bill described to Brooks Scanlon Corporation, one of the defendants named in the bill. An answer for defendant Amos was filed. An Order was entered on December 29, 1932, wherein it was decreed that the temporary restraining order theretofore entered in this cause be made permanent.

Circuit Court, Leon County

John E. Mathews, Complainant, vs. Doyle E. Carlton, as Governor, Ernest Amos, as Comptroller, and W. V. Knott, as State Treasurer, Defendants.

This suit was brought for the purpose of enjoining and prohibiting Ernest Amos, as Comptroller of the State of Florida, and W. V. Knott, as Treasurer of the State of Florida, from collecting, enforcing or attempting to collect or enforce the First or the Second Gas Tax, or both, severally attempted to be levied and imposed by Chapter 15659, Laws of Florida, 1931. Interlocutory order entered on September 4, 1931, overruling demurrer and granting temporary injunction. Whereupon on September 5, 1931, an appeal was entered from said order. The Supreme Court on October 28, 1931, reversed the decision of the Circuit Court.

Circuit Court, Duval County

William C. Matthews, Complainant, vs. Henry A. Halsema, et al, Defendants.

This suit was filed for the purpose of foreclosing a mortgage of the complainant, the State being made a party defendant by reason of several judgments against the defendant, all obtained several years after the date of complainant's mortgage. A formal answer was filed on behalf of the State. Final decree in favor of complainant was entered on June 28, 1932.

Circuit Court, Leon County

John E. Mathews, Complainant, vs. Nathan Mayo, as Commissioner of Agriculture, et al, Defendants.

A bill for injunction was filed herein wherein it was prayed that the defendants—the Board of Commissioners of State Institutions—be enjoined and restrained from purchasing land on which to erect a building in which to house the chemical laboratory used by the State Chemist, etc. An order granting a perpetual injunction was entered on September 26, 1931, from which ruling an appeal was entered in the Supreme Court where the case is now pending.

Circuit Court, Highlands County

L. Maxcy, Inc., et al, Complainants, vs. Nathan Mayo, as Commissioner of Agriculture, et al, Defendants.

This is a suit brought to test the constitutionality of Section 4 of Chapter 11844 Acts of 1927, as amended by Section 4 of Chapter 14485, Acts of 1929, also Chapter 14662, Acts 1931, and praying, among other things, that defendants be enjoined and restrained from seizing and destroying any fruit grown upon complainant's groves mentioned in the bill of complaint. Application for temporary injunction was denied, and the court ordered that the bill of complaint be dismissed, from which ruling an appeal was entered in the Supreme Court where the law in question was held to be constitutional.

Circuit Court, Dade County

M. L. Mershon Properties, Inc., Plaintiff, vs. Northern Investment Corporation, et al., Defendants.

The bill of complaint shows that the Comptroller was made a party to this suit by reason of the State of Florida owning a certain tax certificate for 1930 State and County Taxes, in said Bill of Complaint more particularly described. Order setting aside and vacating Decree Pro Confesso filed Sept. 8, 1932. Still pending.

Circuit Court, Dade County

Miami Corporation, Complainant, vs. Coral Gables Securities Corporation, et al., Defendants.

A bill of complaint was filed herein in which it was prayed, among other things, that by decree of this Court it may be adjudged that each and every of said defendants, jointly and severally, have no valid right, title, interest, claim, lien or demand of any sort or nature, recognizable in this Court or against your orator and its successors and assigns in or to the lands and submerged lands in said bill mentioned. Suit dismissed on May 18, 1932.

Circuit Court, Dade County

The Miami Transit Company, Complainant, vs. Ernest Amos, as Comptroller, et al., Defendants.

This suit was brought in an effort to enjoin and restrain the defendants from assessing, attempting to assess, collect, or attempting to collect in any manner any tax, license charge or fee whatsoever under Chapter 14574, Laws of Florida, 1929. Demurrer to bill was filed on February 5, 1930, and on April 7 an order was entered sustaining the demurrer, from which ruling an appeal was taken to the Supreme Court where the case is pending.

Circuit Court, Dade County

The Miami Transit Company, Complainants, vs. W. S. McLin, Acting Motor Vehicle Commissioner, et al., Defendants.

This suit was brought in an effort to enjoin and restrain the defendants from assessing, or collecting any tax, license charge, or fee whatsoever under Section 1285 of Article 1 of Chapter IV of Title 6 of the First Division of the Compiled General Laws of Florida, 1927, from complainant or all and singular its passenger busses in the bill mentioned. Answer and demurrer were filed Feb. 5, 1930. Demurrer was sustained and complainants given leave to file amended bill which was filed on May 5, 1930, and demurrer filed, which demurrer was sustained on August 13, 1930, from which ruling an appeal was taken to the Supreme Court, where the judgment of the lower court was affirmed on March 24, 1931.

Circuit Court, Dade County

Miami Fish and Ice Co., Inc., Complainant, vs. E. C. Strickland, Shell Fish Commissioner, et al., Defendants.

This was an injunction suit brought to restrain the Shell Fish Commissioner from enforcing the laws against the use of seines as against seining for mackerel in view of the provisions of Section 1 of Chapter 7907, Acts of 1919. Order of dismissal filed Sept. 30, 1931.

Circuit Court, Dade County

C. L. Miller & Company, as Trustee, Complainants, vs. Callie H. Watson, a widow, et al., Defendants.

A petition was filed in this case by the Trust Company of Georgia wherein it was prayed that said trust company be substituted as complainant trustee in the above entitled cause for C. L. Miller, as trustee. Ernest Amos, Comptroller of this State, intervened and filed a petition protesting against the appointment of said trustee in the above cause. Order of confirmation was filed on September 7, 1929, from which ruling an appeal was entered to the Supreme Court. Order of dismissal filed Sept. 30, 1931.

U. S. District Court, Southern District of Florida, Hillsborough County

Adriana Morales, Complainant, vs. The Citizens Bank and Trust Company, etc., et al., Defendants.

A petition was filed in this suit wherein it was prayed that this Court proceed in the premises to appoint the Receiver for the defendant Bank. A petition for intervention on behalf of the State was filed by the Attorney General, and such petition was granted. Motion to dismiss was filed on April 7, 1930. Case abated.

Circuit Court, Polk County

C. J. Morrison, Complainant, vs. Sarah C. Pipkin, as Administratrix of the Estate of D. M. Pipkin, deceased, et al., Defendants.

This suit was brought to foreclose a certain mortgage covering property, in Polk County, the State being made a party on account of a judgment obtained against E. H. Pipkins, son of D. M. Pipkins, deceased. Final decree entered for complainant Aug. 5, 1931, sale confirmed Feb. 5, 1932, showing sale of property to Louie E. Morrison.

Circuit Court, Palm Beach County

S. D. Morris, as Successor Trustee, Complainant, vs. J. P. Cochrane, as Liquidator of First American Bank & Trust Co., Ernest Amos, as Comptroller and W. V. Knott, as State Treasurer, Defendants.

A bill for accounting and for the appointment of a Receiver was filed wherein it was prayed, among other things, that the Court by proper order appoint a Receiver, etc., and that certain securities held by the State Treas-

urer under the Trust Act of 1927 be ordered and required to be delivered to said Receiver for liquidation. Demurrers on behalf of the defendants were filed, which demurrer was sustained, with leave to file an amended bill. Another demurrer was filed to the amended bill and it was overruled on September 15, 1930. From which ruling an appeal was entered in the Supreme Court where the order appealed from was reversed.

Circuit Court, St. Johns County

Henry Muller, Complainant, vs. Obe P. Goode, as Clerk of the Circuit Court, Defendant.

The complainant here alleges that the Tax Collector received payment of the taxes assessed against his personal property, and marked the assessment roll "paid" but that such roll had been changed to indicate that such personal property was not paid, and prayed that a temporary restraining order be issued restraining defendant from transferring, assigning or otherwise using the tax certificates mentioned in the bill of complaint, etc. A stipulation for dismissal was filed on November 13, 1931, and on November 16, 1931, an order of dismissal was entered.

Circuit Court, Palm Beach County

Richard McAllister, Jr., Complainant, vs. Roy O'Brannon, as Tax Collector of Palm Beach County, Florida, Defendant.

A bill for injunction was filed herein praying that the defendant be enjoined and restrained from offering for sale, selling and attempting to sell certain land belonging to Complainant in said bill described at the next ensuing State and County tax sale, and that said Tax Collector be temporarily enjoined from issuing any tax sale certificates against any of complainant's land for 1929 taxes, etc. Demurrer to bill was sustained on June 5, 1930, with leave given to file amended bill, to which a demurrer was filed.

Circuit Court, Palm Beach County

McAllister Realty Company, Complainant, vs. Roy A. O'Brannon, as Tax Collector of Palm Beach County, Florida, Defendant.

A bill for injunction was filed herein praying that the defendant be enjoined and restrained from offering for sale, selling and attempting to sell certain land belonging to Complainant in said bill described at the next ensuing State and County tax sale, and that said Tax Collector be temporarily enjoined from issuing any tax sale certificates against any of Complainant's land for 1929 taxes, etc. Demurrer to bill was sustained on June 5, 1930, with leave given to file amended bill, to which a demurrer was filed.

Circuit Court, Duval County

W. L. McCalley, Jr., Complainant, vs. Edward Paul Hamler and James J. Hayes, et al., Defendants.

This suit was brought to foreclose a mortgage covering property in Duval County, the State being made a party by reason that said State for the use and benefit of Duval County is interested as a junior judgment creditor of one of the defendants.

Circuit Court, Duval County

W. L. McCalley, Jr., Complainant, vs. Edward Hamler, et al., Defendants.

This suit was brought to foreclose a mortgage covering property in Duval County, the State being made a party by reason that said State for the use and benefit of Duval County is interested as a junior judgment creditor of one of the defendants.

Circuit Court, Duval County

W. L. McCalley, Jr., Complainant, vs. Henry A. Halsema, et al., Defendants.

This suit was brought to foreclose a mortgage covering property in Duval County, the State being made a party by reason that said State for the use and benefit of Duval County is interested as a junior judgment creditor of one of the defendants.

Circuit Court, Leon County

National Convoy & Trucking Co., Complainant, vs. E. S. Matthews, et al., as Railroad Commission of Florida, Defendants.

A bill of complaint was filed in this case wherein it was prayed, among other things, that a temporary restraining order issue enjoining and restraining the defendants from interfering with the complainants in the operation of its motor vehicles over the public highways of this State, etc. An answer for the defendants was filed. A temporary injunction was granted. An answer was filed on August 20 on behalf of the defendants. Also a motion to dissolve the injunction, which motion was granted and the suit dismissed on October 11, 1932.

Circuit Court, St. Johns County

Nelson Properties, Inc., a Florida Corporation, Complainant, vs. J. Warren Bullen, et al., Defendants.

This is a foreclosure suit—the State having been made a party by reason of a certain easement to said State sixty-six feet wide for State Road No. 78 in which the holder of the mortgage did not join. Final decree filed March 19, 1932. Order confirming sale filed July 18, 1932.

Circuit Court, Volusia County

New Smyrna Investment and Loan Co., Complainant, vs. E. L. Mickle, as Liquidator of the Fidelity Bank of New Smyrna; Ernest Amos, Comptroller and W. V. Knott, State Treasurer, Defendants.

The bill of complaint in this case alleges, among other things, that complainant has a claim in the sum of \$1178.33, together with legal interest from the date of the appointment and qualification of E. L. Mickle, as liquidator, against the moneys and assets of the Fidelity Bank of New Smyrna, and also all moneys and assets of the said Bank in the possession of the State Comptroller and the State Treasurer, which said sum should be paid to this complainant before the allowance and payment by said liquidator of the claims of the general creditors of said bank. Final decree for complainant entered Sept. 20, 1932.

Circuit Court, Palm Beach County

Lynn S. Nichols, Complainant, vs. Florida Bank & Trust Co., of West Palm Beach, et al., Defendants.

A bill for accounting and for the appointment of a Receiver was filed, wherein it was prayed, among other things, that the court by proper order appoint a Receiver, etc., and certain securities held by the State Treasurer under the Trust Act of 1927 be ordered and required to be delivered to said Receiver for liquidation. An answer was filed on behalf of the State Treasurer. A final decree was entered in favor of the complainant, whereupon an appeal was taken to the Supreme Court, where the judgment of the lower court was reversed on June 25, 1931.

Circuit Court, Brevard County

Amy Mabel Nisbet, et al., Complainants, vs. Peter Tomasello, Jr., as Receiver of the Cocoa Bank & Trust Co., et al., Defendants.

A bill of complaint was filed in this case wherein it was prayed, among other things, that this Honorable court decree that Hon. Ernest Amos, as Comptroller, Hon. W. V. Knott, as Treasurer, and Hon. Cary D. Landis, Attorney General, three of the defendants named therein, promptly determine the market value of certain securities deposited in trust with the State Treasurer by the Cocoa Bank & Trust Company to qualify said Bank to act as executor of estates of deceased persons, etc.; that upon the coming in of the proof that this court decree the amount in cash that is due complainants, including interest, and that the defendants liable for the same pay it in cash. A decree for complainant was entered from which ruling an appeal was entered in the Supreme Court. The appeal was dismissed on April 2, 1931.

District Court of the United States, Southern District of Florida

Orlando Bank & Trust Company, *In Re* Depository for Bankruptcy Funds.

A rule to show cause issued in this case requiring the Comptroller to pay to the clerk a statutory fee as a commission on bonds put up with the clerk for deposits of bankruptcy funds. Answer to the rule was filed, also brief. On April 4, 1931, an order was entered denying the petition of the clerk to require the Hon. Ernest Amos, Comptroller, to pay one per cent clerk's fee.

Circuit Court, Valusia County

Ormond Beach Bond, Mortgage and Guaranty Co., Complainant, vs. E. L. Mickle, as Liquidator of Merchants Bank & Trust Company, et al., Defendants.

A bill of complaint was filed herein praying among other things that the defendants be required to return to complainants a certain check deposited with the Merchants Bank & Trust Company, and that complainant be decreed to be entitled to a declaration of trust with reference to said check and/or proceeds thereof, and that complainant shall be paid the proceeds of said check in full prior to the payment of the claims of any general creditors of said trust of which the liquidator is in charge. A decree for complainant was rendered, from which appeal was entered to the Supreme Court where the case is still pending.

Circuit Court, Pinellas County

Thomas Orr, Complainant, vs. The Guaranty Title & Trust Co., as Trustee; W. V. Knott, State Treasurer, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering land in Pinellas County, Florida, in which it is alleged W. V. Knott, State Treasurer, claims or pretends to claim some interest or right by reason of a certain assignment, or trust deed, the same being executed by the Guaranty Title and Trust Co., etc. Answer on behalf of Mr Knott was filed. Decree confirming sale filed Nov. 4, 1931. No deficiency decree. Property sold to complainant.

Circuit Court, Leon County

F. B. Palbicke, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

A bill for declaratory judgment was filed in this case wherein it is alleged that complainant is the holder of Certificates No. 199, sale of 1917 and No. 174, sale of 1918, State and County Tax Certificates of Santa Rosa County; that the Comptroller notified complainant of the invalidity of said certificates, and within ninety days of such notification complainant produced his redemption receipt and certificate to the defendant for refund under Section 783, Revised General Statutes of 1920, and that the Comptroller refused to draw his warrant on the State Treasurer, and that such refusal was in violation of law. Appearance for defendant was filed on January 2, 1933.

Circuit Court, Brevard County

Stewart W. Pinkerton, Complainant, vs. Brevard County Bank & Trust Co., Ernest Amos, as Comptroller and W. V. Knott, as Treasurer, et al., Defendants.

A bill for an account was filed herein and it was prayed, among other things that upon the completion of said accounting the defendants for the account of the complainant and for the account of the Estate of D. St. Clair Nisbet, etc., be required to hold certain moneys for the account of complainant, and of the estate of D. St. Clair Nisbet, and paid to complainant and to the said estate until claims of said trust have been paid in full, and also praying that a temporary injunction be issued. Final decree for complainant filed August 2, 1932.

Circuit Court, Polk County

Polk Bond & Mortgage Co., Complainants, vs. Sarah C. Pipkin, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering land in Polk County, the State having been made a party on account of a judgment obtained against an heir of the Pipkin estate. An answer on behalf of the State was filed on October 6, 1930. Final decree entered Feb. 9, 1931, sale confirmed April 11, 1931, showing sale of property to Bank of Mulberry, Mulberry, Florida.

Circuit Court, Volusia County

Frank W. Pope, Complainant, vs. Merchants Bank & Trust Company, et al., and Ernest Amos, as Comptroller, Defendants.

A bill for accounting and for the appointment of a Court Receiver was filed wherein it was prayed that all securities of said Bank which were in the hands of the defendants, individually or as officers, directors, stockholders or as liquidator of said Bank or either of them, by virtue and by reason of a certain resolution, plan, scheme, device or unlawful and fraudulent preference, were and are the property and assets of said Bank, and the said defendants be forthwith ordered and decreed to restore the same to said Bank, its Receiver or other officer to be appointed by this court, etc. A motion to dismiss was filed, also joint demurrers. Order entered dismissing suit at cost of complainant.

Circuit Court, Duval County

Emmett H. Pope, Complainant, vs. H. A. Halsema, et al., Defendants.

This suit was brought for the purpose of foreclosing a mortgage covering property in Duval County, the State having been made a party by reason of certain judgments held against H. A. Halsema. Decree confirming disbursements and for deficiency and confirming and discharging Receiver, filed March 5, 1932, for complainant.

Circuit Court, Leon County

Legh R. Powell, Jr., et al., Receivers East and West Coast Ry., Plaintiffs,
vs. Ernest Amos, as Comptroller of the State of Florida, Defendant.

A bill for injunction was filed in this case, wherein it was prayed that the defendant be enjoined and restrained from collecting certain taxes alleged to be levied for the years 1930-1931 against the property of the East and West Coast Ry. A consent decree was entered on October 7, 1932, wherein it was ordered that the sum of \$23,535.66 tendered into court forthwith be turned over to the defendant in settlement of the taxes in question.

Circuit Court, Leon County

Legh R. Powell, Jr., et al., Receivers Florida Western & Northern Railroad Co., Plaintiffs, vs. Ernest Amos, as Comptroller, Defendant.

A bill for injunction was filed in this case, wherein it was prayed that the defendant be enjoined and restrained from collecting certain taxes alleged to be levied for the years 1930-1931 against the property of the Florida Western & Northern Railroad Co. A consent decree was entered on August 30, wherein it was ordered that the sum of \$153,094.74, tendered into court, be forthwith turned over to the defendant in settlement of the taxes in question.

Circuit Court, Leon County

Legh R. Powell, Jr., et al., Receivers Florida Western & Northern Railroad Co., Plaintiffs, vs. Ernest Amos, as Comptroller, Defendant.

A bill for injunction was filed in this case, wherein it was prayed that the defendant be enjoined and restrained from collecting certain taxes alleged to be levied for the years 1930-1931 against the property of the Florida Western & Northern Railroad Co. A consent decree was entered on October 7, 1932, wherein it was ordered that the sum of \$36,535.63 tendered into court be forthwith turned over to the defendant in settlement of the taxes in question.

Circuit Court, Leon County

Legh R. Powell, Jr., et al., Receivers Seaboard All-Florida Railway, Plaintiffs, vs. Ernest Amos, as Comptroller, Defendant.

A bill for injunction was filed in this case, wherein it was prayed that the defendant be enjoined and restrained from collecting certain taxes alleged to be levied for the years 1930-1931 against the property of the Seaboard All-Florida Railway. A consent decree was entered on August 30, wherein it was ordered that the sum of \$150,178.20 tendered into court, forthwith be turned over to the defendant in settlement of the taxes in question.

Circuit Court, Leon County

Lekh R. Powell, Jr., et al., Receivers Seaboard All-Florida Railway, Plaintiffs, vs. Ernest Amos, as Comptroller of the State of Florida, Defendants.

A bill for injunction was filed in this case, wherein it was prayed that the defendant be enjoined and restrained from collecting certain taxes alleged to be levied for the years 1930-1931 against the property of the Seaboard All-Florida Ry. A consent decree was entered on October 7, 1932, wherein it was ordered that the sum of \$2,790.66 tendered into court forthwith be turned over to the defendant in settlement of the taxes in question.

Circuit Court, Leon County

Lekh R. Powell, Jr., et al., Receivers Florida Western & Northern Railroad Co., Plaintiffs, vs. Ernest Amos, as Comptroller of the State of Florida, Defendant.

A bill for injunction was filed in this case, wherein it was prayed that the defendant be enjoined and restrained from collecting certain taxes alleged to be levied for the years 1930-1931 against the property of the Florida Western & Northern Railroad. A consent decree was entered on November 11, 1932, wherein it was ordered that the sum of \$34,514.24 tendered into court forthwith be turned over to the defendant in settlement of the taxes in question.

Circuit Court, Leon County

A. B. Quirk, Complainant, vs. Board of Bond Trustees Special Road & Bridge District No. 4, DeSoto County, et al., Respondents.

A bill of complaint was filed in this case wherein it was prayed that a temporary restraining order be entered restraining W. V. Knott, State Treasurer, one of the respondents, from disposing of or in any manner using or transferring the sum of \$3720.38 belonging to said Board of Bond Trustees, or the said collateral securities pledged thereto. Motion to dismiss was filed on May 2, 1932. On June 2nd an order was entered denying said motion and defendants given until July 2nd to file an answer, and on which day answer was filed.

Circuit Court, Leon County

A. B. Quirk, Complainant, vs. Doyle E. Carlton, Chairman, et al., as Board of Administration, Defendants.

A bill of complaint was filed herein and it was prayed that a temporary restraining order be entered enjoining the said defendants from transferring any of the said ad valorem taxes, more particularly described in said bill of complaint until final hearing in this cause, and that upon final hearing this court issue a mandatory order, requiring the said defendants to perform all acts and duties necessary to transfer the said ad valorem tax moneys now held by them to your complainant for the payment of his bonds, or in so far as the moneys may go. On August 31, 1932, motion to dismiss was filed on behalf of the defendants.

Circuit Court, Duval County

Margaret Raike, Unmarried, Complainant, vs. Henry A. Halsema, et al., Defendants.

This suit was brought for the purpose of foreclosing a mortgage covering property in Duval County, the State having been made a party by reason of the fact that it holds several judgments against Halsema recovered in estreated bond cases. Order confirming sale, filed March 8, 1932, for complainant.

Circuit Court, Volusia County

Ranger Realty Company, Complainant, vs. T. E. Fitzgerald, et al., Defendants.

The bill of complaint shows that the Comptroller was made a party to this suit by reason of the State owning certain tax certificates for State and County taxes in said bill more particularly described. A motion to dismiss was filed on behalf of the Comptroller, which motion was granted and suit dismissed as to the Comptroller on October 3, 1932.

Circuit Court, Volusia County

Ranger Realty Company, Complainant, vs. H. C. Culbreth, et al., Defendants.

The bill of complaint shows that the Comptroller was made a party to this suit by reason of the State owning certain tax certificates for State and County taxes in said bill more particularly described. A motion to dismiss was filed on behalf of the Comptroller, which motion was granted and suit dismissed as to the Comptroller on October 3, 1932.

Circuit Court, Volusia County

Ranger Realty Company, Complainant, vs. Annie S. Bouchelle, et al., Defendants.

The bill of complaint shows that the Comptroller was made a party to this suit by reason of the State owning certain tax certificates for State and County taxes in said bill more particularly described. A motion to dismiss was filed on behalf of the Comptroller, which motion was granted and the suit dismissed as to the Comptroller on October 3, 1932.

Circuit Court, Volusia County

Ranger Realty Company, Complainant, vs. Elizabeth G. Bond, et al., Defendants.

The bill of complaint shows that the Comptroller was made a party to this suit by reason of the State owning certain tax certificates for State and County taxes in said bill more particularly described. A motion to dismiss was filed on behalf of the Comptroller, which motion was granted and suit dismissed as to the Comptroller on October 3, 1932.

Circuit Court Volusia County

Ranger Realty Company, Complainant, vs. J. V. Vaughn, et al., Defendants.

The bill of complaint shows that the Comptroller was made a party to this suit by reason of the State owning certain tax certificates for State and County taxes, in said bill more particularly described. A motion to dismiss was filed on behalf of the Comptroller, which motion was granted and suit dismissed as to the Comptroller on October 3, 1932.

Circuit Court, Volusia County

Ranger Realty Company, Complainant, vs. Agnes S. Ladd, et al., Defendants.

The bill of complaint shows that the Comptroller was made a party to this suit by reason of the State owning certain tax certificates for State and County taxes in said bill more particularly described. A motion to dismiss was filed on behalf of the Comptroller, which motion was granted and suit dismissed as to the Comptroller on October 3, 1932.

Circuit Court, Volusia County

Ranger Realty Company, Complainant, vs. Mary S. Howarth, et al., Defendants.

The bill of complaint shows that the Comptroller was made a party to this suit by reason of the State owning certain tax certificates for State and County taxes in said bill more particularly described. A motion to dismiss was filed on behalf of the Comptroller, which motion was granted and suit dismissed as to the Comptroller on October 3, 1932.

Circuit Court, Volusia County

Ranger Realty Company, Complainant, vs. Arthur J. Rhode et al., Defendants.

The bill of complaint shows that the Comptroller was made a party to this suit by reason of the State owning certain tax certificates for State and County taxes in said bill more particularly described. A motion to dismiss was filed on behalf of the Comptroller, which motion was granted and suit dismissed as to the Comptroller on October 3, 1932.

Circuit Court, Volusia County

Ranger Realty Company, Complainant, vs. Alice W. Gorman, et al., Defendants.

The bill of complaint shows that the Comptroller was made a party to this suit by reason of the State owning certain tax certificates for State and County taxes in said bill more particularly described. A motion to dismiss was filed on behalf of the Comptroller, which motion was granted and suit dismissed as to the Comptroller on October 3, 1932.

Circuit Court, Volusia County

Ranger Realty Company, Complainant, vs. James A. Allen, et al., Defendants.

The bill of complaint shows that the Comptroller was made a party to this suit by reason of the State owning certain tax certificates for State and County taxes in said bill more particularly described. A motion to dismiss was filed on behalf of the Comptroller, which motion was granted and suit dismissed as to the Comptroller on October 3, 1932.

Circuit Court, Dade County

Mrs. Alice Ruth Ransom, Complainant, vs. Newton Lummus, Tax Assessor, et al., Defendants.

This is an injunction suit brought in an effort to enjoin and restrain the defendants from selling certain tax certificates in the bill of complaint mentioned, and praying that said defendants be enjoined and restrained from assessing certain property for taxes. An answer was filed on behalf of the defendants. Order of reference filed Dec. 13th, 1932. Still pending.

Circuit Court, Dade County

Romilems Inc, Complainant, vs. Ranger Realty Co., and Ernest Amos, as Comptroller, Defendants.

This is a suit to cancel certain tax certificates and to restrain the issuance of tax deed on certain property in Dade County. Motion to strike filed Jan. 4, 1933.

United States District Court, Northern District of Florida

H. C. Rorick, et al., Complainants, vs. Board of Commissioners of Everglades Drainage District, Defendants.

This suit as originally filed was against the above named defendants only. A motion was filed requesting leave to file a supplemental bill naming as defendants also the Trustees of the Internal Improvement Fund of the State of Florida, and the respective clerks of the Circuit Court of the several counties embraced in said Drainage District, which said motion was granted and the supplemental bill was filed. The purpose of this suit was to test the constitutionality of the Acts of the Legislature of 1929 and 1931, being Chapters 14633, and 14717, respectively, and to have said acts declared void on the ground that they impaired the obligation of contracts in the sale of certain Everglades Drainage District bonds, it being prayed, among other things, that an interlocutory order be entered restraining the transfer of tax certificates from the Trustees to the Board of Commissioners of Everglades Drainage District, and to restrain the use of Everglades bonds for redemption of Everglades tax certificates, and to restrain the Trustees from using certificates of indebtedness for paying Everglades taxes. Motions to dismiss were filed on behalf of the defendants. An order was entered on September 6, 1932, overruling all motions and allowing the defendants until October 15th to answer. Answer filed.

Circuit Court, Leon County

Seaboard Air Line Railway Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This is a suit brought for the purpose of seeking to enjoin and restrain the collection of school district taxes for the year 1926. Testimony was taken, briefs filed and arguments had before Judge Jones on July 22, 1930, but thus far no decision has been rendered.

Circuit Court, Leon County

Seaboard Air Line Railway Co., Complainant, vs. Ernest Amos, as Comptroller, Defendants.

This suit was brought in an effort to enjoin the collection of special school district taxes, Marion County. Case pending on answer to bill.

Circuit Court, Dade County

F. C. Shaw and wife, Complainants, vs. H. W. Hecht and Trustees I. I. Fund, Defendants.

This suit seeks the cancellation of a tax deed based upon Everglades Drainage District tax certificate. Decree for complainants was entered April 25, 1932, and an appeal was entered to the Supreme Court.

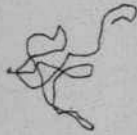
Circuit Court, Dade County

Josephine Sloane, Complainant, vs. T. J. Wisecarver, et al., and Board of Commissioners Everglades Drainage District, and Trustees I. I. Fund, Defendants.

This suit is for the cancellation of a tax deed based on Everglades Drainage District tax certificate. Pending.

Circuit Court, Dade County

Sirocco Company, Complainant, vs. Henry T. Reed and State Board of Education, Defendants.



A bill to quiet title was filed in this suit, the State Board of Education being made a party by reason of a certain claim to the land described in the bill of complaint. An answer was filed on behalf of said Board wherein it was denied that the Board claims any right, title or interest in or to the lands mentioned in said bill.

Circuit Court, Polk County

D. O. Sloan, Complainant, vs. E. S. Matthews, et al., Defendants.

A bill of complaint was filed herein alleging that complainant was the sole owner of a White motor truck and that same was used solely and exclusively in the interstate transportation of freight for hire as a private carrier, etc., and prayed that defendants be enjoined and restrained from in-

terfering with complainant in the conduct of his said business, and that a temporary injunction be issued, and that upon a final hearing said injunction be made perpetual. Temporary restraining order granted on February 3, 1931, to continue in effect until February 16, 1931, at which time motion to dismiss was denied and the demurrer overruled and a temporary injunction was granted.

Circuit Court, Duval County

C. U. Smith, Complainant, vs. L. L. Adams, Florida Railroad Commission, Intervenor.

This is an injunction suit involving Senate Bill No. 411, Chapter 14764, Acts of 1931, known as the Motor Bus Act. An application for intervention was filed on behalf of the Railroad Commission, which application was granted and an answer for the commissioners was filed on September 19, 1931. Upon final decree it was held that complainant was not a contract carrier but was held to be a common carrier, therefore had no right to test said law, and it was ordered that the suit be dismissed. Final order was entered holding that the carriers involved were in fact common carriers and consequently not entitled to the injunctive relief sought.

Circuit Court, Duval County

E. S. Smith, Plaintiff, vs. W. B. Cahoon, as Sheriff in and for Duval County.

This case involved the constitutionality of Chapter 13700, Acts of 1929. Upon hearing of petition of the plaintiff the conclusion was reached that Chapter 13700, Laws of Florida, 1929, violates Sections 1 and 12 of the Declaration of Rights of the Constitution of the State of Florida, and the Fourteenth Amendment of the Constitution of the United States, in so far as the same relates to private carriers for compensation, though it does not affect the validity of the Act as it relates to common carriers. Therefore, it was ordered that petitioner be discharged from custody, and that the costs be taxed against Duval County, from which ruling the case was taken to the Supreme Court on writ of error where the Act in question was upheld. An appeal has been taken from the decision of the Supreme Court of Florida to the Supreme Court of the United States, where the ruling of our Supreme Court was upheld.

United States District Court, Jacksonville Division, Southern District of Florida

Lula G. Solla, Plaintiff, vs. M. G. McNair, Receiver of First National Bank of St. Augustine, et al., Defendant.

A bill of complaint was filed in this suit wherein it was prayed that this court decree the right of plaintiff in certain moneys collected by said bank as trustee and that for the payment thereof plaintiff has a lien upon certain bonds and securities deposited with the State Treasurer under the Trust Act of 1927, etc. Answer of Mr. Knott, State Treasurer, was filed and argued before court, but to date no decision has been rendered.

Circuit Court, Pinellas County

Gussie Solomon, Widow, Complainant, vs. First National Bank of St. Petersburg, and W. V. Knott, State Treasurer, Defendants.

A bill of complaint was filed in this case wherein it was alleged that the First National Bank of St. Petersburg held the sum of \$8,000.00 in trust for the use and benefit of complainant, and that said bank had failed to carry out and perform the duties imposed upon it under said trust, etc., praying that this honorable court adjudicate and decree that complainant has a preferential claim against the securities held by W. V. Knott, as State Treasurer of the State of Florida in trust for the First National Bank of St. Petersburg to the amount of \$8,000.00, and interest. Order entered November 5, directing the State Treasurer to deliver to the receiver the securities named in the bill of complaint.

Circuit Court, Dade County

Somerset Company, Complainant, vs. H. W. Hecht and Trustees I. I. Fund, Defendants. No. 33617-D.

This suit seeks the cancellation of a tax deed based upon Everglades Drainage District tax certificate. A motion to dismiss was filed on behalf of the trustees, which motion was denied. An answer on behalf of the defendants was filed on April 16, 1932.

Circuit Court, Dade County

Somerset Company, Complainant, vs. H. W. Hecht and Trustees I. I. Fund, Defendants. No. 33621-D.

This suit seeks the cancellation of a tax deed based upon Everglades Drainage District tax certificate. A motion to dismiss was filed on behalf of the trustees, which motion was denied. An answer on behalf of the defendants was filed on April 16, 1932.

Circuit Court, Flagler County

South Hastings Drainage District, Complainant, vs. Certain Lands in Flagler County, in said District, and the owners thereon, Defendants.

This was a suit brought in an effort to collect delinquent drainage taxes. Final decree was filed 28th day of February, 1931, and preliminary order confirming sale filed April 13, 1931.

In the District Court of the United States, Southern District of Florida

Southern Real Estate Corporation, a corporation, etc., Complainant, vs. O. P. Goode, as Clerk of the Circuit Court, Defendant.

This suit was filed in an effort to have certain tax sale certificates cancelled, and praying that a restraining order may be issued to the defendant enjoining and restraining him from auctioning off and selling certain tax certificates, and that the assessments of said lands, as also the sale thereof may by proper decree of this court be declared to be null and void, and that

the certificates of such sales issued be cancelled as a cloud upon the title of said land. An order was entered on February 21 denying said injunction as prayed, and ordering that the motion to dismiss be granted, with leave to the complainants to file an amended bill. A motion to dismiss the amended bill was filed. Still pending.

Circuit Court, Leon County

M. Squires, Complainant, vs. Ernest Amos, Comptroller, Defendant.

A bill of complaint was filed in this case wherein it was prayed that the Comptroller be required to refund to the complainant a certain sum of money which he had paid for a tax sale certificate covering the unpaid taxes for the year 1927 on certain lands in St. Lucie County, it being claimed that said amount should not have been included in the cost of said certificate by reason of the fact that the taxes on certain parts of the lands described in said certificate had already been paid. A motion to dismiss was filed for defendant on December 29, 1932.

District Court of the United States, Southern District of Florida

Standard Coffee Co., Inc., Complainant, vs. W. Kenneth Barnes, as Prosecuting Attorney, et al., Defendants.

A bill of complaint was filed in this case wherein it was prayed, among other things, that Chapter 14491, Acts of 1929, be declared to be unconstitutional, and asking that an interlocutory injunction be issued until a final decree of this court and at that time a permanent injunction be issued against the defendants enjoining them from interfering with or in any wise molesting the complainant or its agents, etc. Temporary restraining order issued on May 13, 1931.

United States District Court, Southern District of Florida

Standard Oil Co., Plaintiff in Error, vs. Florida East Coast Railway Co., Defendants.

A petition was filed herein asking for instructions as to whether or not the receivers are liable for the license tax imposed on railroads under Section 1238 of the Compiled General Laws of Florida, and whether or not they should pay the same from the moneys in their hands as such receivers. On May 19, 1932, an order was entered wherein it was directed that the taxes in question be paid by the receiver.

Circuit Court, Sarasota County

State and Sarasota County, Complainants, vs. J. C. Bartlett, Trustee, Inc., et al., Defendants.

This suit involves tax sale certificates. On March 14, 1932, final decree of foreclosure and sale was entered.

Circuit Court, Sarasota County

State and Sarasota County, Complainants, vs. Exchange National Bank of Tampa, as Administrator of the Estate of Adrian C. Honore, deceased, et al., Defendants.

This suit was brought to enjoin the defendants from cutting timber on lands where tax certificates were outstanding. Temporary injunction was granted on February 5, 1932. Order dismissing temporary injunction filed February 27, 1932.

Circuit Court, Sarasota County

State and Sarasota County, Complainants, vs. F. J. Lewis, et al., Defendants.

This suit was brought to enjoin the defendants from cutting timber on lands where tax certificates were outstanding. Temporary injunction was granted on February 12, 1932. Still pending.

Circuit Court, Sarasota County

State and Sarasota County, Complainants, vs. West Coast Jofra Company and J. H. Lord, Jr., Defendants.

This suit was brought to enjoin the defendants from cutting timber on lands where tax certificates were outstanding. Injunction was secured to prohibit cutting of timber unless taxes were paid.

Supreme Court of Florida

State Ex Rel Alton M. Ake, Relator, vs. Broward County Port Authority, et al., Respondent.

A petition for an alternative writ of mandamus was filed in this case, wherein it was prayed among other things that the Comptroller of the State be commanded to assess and levy on all railroad lines, railroad property, telephone and telegraph lines, and telephone and telegraph property in said Broward County Port District a tax at the rate prescribed in a certain resolution, etc. Alternative writ issued, and a return on behalf of the Comptroller was filed on September 20, 1932. A motion to dismiss as to the Comptroller was filed on November 19, 1932.

Supreme Court of Florida

State ex rel. E. L. Barbee, a femme sole, Relator, vs. E. B. Leatherman, as Clerk Circuit Court, Dade County.

This suit involved certain tax sale certificates, more particularly described in the petition for alternative writ of mandamus filed therein. An alternative writ of mandamus issued. On December 9, 1931, the court filed its opinion wherein it was directed that the alternative writ of mandamus theretofore issued be quashed and the suit dismissed.

Circuit Court, Duval County

State ex rel. M. S. Beasley, Plaintiff, vs. W. B. Cahoon, as Sheriff of Duval County, Defendant.

The plaintiff in this suit was indicted for the violation of Chapter 10177, Acts of 1925, commonly known and referred to as the Florida Small Loan Law. He filed a petition for a writ of habeas corpus, which petition was denied by the Circuit Judge and petitioner remanded to the custody of the sheriff, from which ruling writ of error was allowed, and the case is now pending in the Supreme Court on briefs.

In the Supreme Court

State ex rel. Harry C. Davis, Relator, vs. Doyle E. Carlton, et al., as Members of the Board of Administration, Respondents.

A petition was filed in this suit wherein it was prayed that the Secretary of the Board of Administration do draw his warrant upon the respondent, W. V. Knott, as County Treasurer ex officio of Indian River and Osceola Counties, out of the sum in the possession, custody and control of said respondent, credited to the interest and sinking fund account of the Atlantic-Gulf Special Road and Bridge District in the sum of \$6,887.34, being one-half of the fund so held by said W. V. Knott and available for the payment of certain outstanding bonds. Pending on briefs.

In the Supreme Court of Florida

State ex rel. Fred H. Davis, Attorney General, and Railroad Commission, Relators, vs. Atlantic Coast Line R. R. Co., Respondents.

This suit involved the Monticello depot. A petition for a peremptory writ of mandamus was filed by the Relators praying that respondent be required to restore its tracks which had been removed from Monticello north to Yuste, which said writ was awarded. A motion was thereupon filed by respondent to vacate or stay said writ, which said motion was denied on October 6, 1931. On December 22, 1931, an amended response of obedience to said peremptory writ of mandamus and discharge from further compliance therewith was filed by the respondent and the relators moved to strike said "response of obedience," but this motion was denied and it was ordered and adjudged that the peremptory writ of mandamus issued in this cause be recalled. A petition was then filed by the relators praying that the order recalling the peremptory writ of mandamus issued in this case be vacated and set aside, which petition was denied on February 25, 1932.

In the Supreme Court of Florida

State ex rel. DuPont-Ball, Inc., Relator, vs. Doyle E. Carlton, et al, as Board of Administration, and W. V. Knott, as County Treasurer ex-officio of Okeechobee County, Respondents.

A petition for an alternative writ of mandamus was filed in this case on June 30, 1932, and alternative writ issued on same date, wherein respondents are commanded to forthwith convene and prepare, pass, adopt, approve and

sign all necessary resolutions, papers and or other documents requisite and or necessary to allocate out of the funds of the gas tax belonging to or allocated to the County of Okeechobee such proportion of such moneys now held by said board as the amount of bonds of the issue mentioned in said petition bears to the aggregate amount of the participating bonds of Okeechobee County to which the accounts are applicable, etc., and commanded the said Ernest Amos, as secretary of said board, to remit to the Hanover National Bank of New York such sum or sums of money as may be applicable to the sinking fund for said bonds described, etc., and further commanded Wm. V. Knott, as County Treasurer, ex-officio, to pay any and all warrants so drawn by said secretary. Answer for the respondents was filed on July 8, 1932.

Circuit Court, Hardee County

State ex rel. First State Savings Bank of Morenci, Michigan, Relator, vs. Special Road and Bridge District No. 7 of Hardee County, et al, Respondents.

A petition for an alternative writ of mandamus was filed herein, praying that respondents be required, or such of them whose duty it is so to do, to pay instantler to relator upon presentation or surrender of certain bonds in said petition mentioned all moneys actually in hand at the time of the service of such writ applicable to the payment of said bonds not exceeding the principal and interest due thereon, etc. Alternative writ issued April 23, 1932. Motion to quash and for compulsory amendment filed. Final judgment entered in favor of the respondents, from which ruling an appeal will be entered by the relator.

Supreme Court of Florida, June Term, A. D. 1931

State ex rel. J. W. Gillespie, et al., Relators, vs. Doyle E. Carlton, Ernest Amos and W. V. Knott, as and constituting the Board of Administration, etc., Respondents.

This is a case of original jurisdiction in mandamus, the object being to require the Board of Administration of the State to convene and prepare, pass, adopt, approve and sign all necessary resolutions, papers, checks, etc., necessary to the payment and disbursement of funds in the custody of the State Treasurer, as County Treasurer ex-officio of Lake County, Florida, for payment to relators of certain bonds issued by Special Road and Bridge District in Lake County, etc. On December 8, 1931, the alternative writ was quashed and proceedings dismissed.

In the Supreme Court

State ex rel. J. W. Gillespie, et al., Relators, vs. Doyle E. Carlton, Ernest Amos and W. V. Knott, as Board of Administration, etc., Respondents.

A petition for an alternative writ of mandamus was filed in this case, wherein it was prayed that respondents be required to pay certain Okeechobee County bonds, in said petition named. Alternative writ issued and

was made returnable to November 24, 1931. Answer or return was filed wherein it was alleged that respondents were ready and willing to comply with the command of said writ by paying to the relators the sum of \$5,400, in payment of interest coupons on said bonds issued February 1, 1927, and due June 1, 1930, and praying that said alternative writ of mandamus be dismissed.

Circuit Court, Leon County

State ex rel. J. W. Gillespie, et al., Relators, vs. Doyle E. Carlton, Ernest Amos and W. V. Knott, as Board of Administration, etc., Respondents.

A petition for an alternative writ of mandamus was filed in this case, wherein it was prayed that respondents be required to pay certain Okeechobee County bond coupons totaling \$1,500.00, in said petition named. Alternative writ issued and was made returnable to July 19, 1932. Peremptory issued on July 30, 1932, wherein it was directed that said coupons be paid instant. Coupons paid on August 1, 1932, and suit dismissed.

Circuit Court, Leon County

State ex rel. Highlands County, etc., et al., Relators, vs. Ernest Amos, as Comptroller, Respondent.

Petition for alternative writ of mandamus was filed in this case, wherein it was prayed that the counties of Highlands, DeSoto, Hernando, Martin, Okeechobee and Polk shall have apportioned its proportion of the assessment made and entered by the Comptroller, Treasurer and Attorney General on the 21st day of April, 1927, upon the rolling stock, appurtenance and personal property subject to taxation of the Seaboard Air Line Railway Company, as returned by it as of January 1, 1927. Alternative writ of mandamus issued, and respondent's return was filed on the 29th day of August, 1927. Still pending.

Circuit Court, Leon County

State ex rel. T. R. Hodges, Relator, vs. Ernest Amos as Comptroller, Respondent.

A petition for an alternative writ of mandamus was filed in this suit, wherein was prayed that respondent be required to pay to relator a certain sum claimed to be due him as Shell Fish Commissioner of the State of Florida. On March 18, 1930, alternative writ issued, on March 22, a motion to quash said writ also return was filed, thereupon on April 26, 1930, court ordered suit dismissed, from which ruling case was appealed to the Supreme Court, where the ruling of the lower court was affirmed.

Supreme Court of the State of Florida

State ex rel. W. V. Knott, et al., Plaintiffs, vs. George Willmer, et al., Creditors of Citizens Bank & Trust Co., and Geo. W. Tedder, as Judge, and as Receiver, Defendants.

This suit was for the purpose of having determined at the earliest possible moment whether the liquidation of the affairs of the Citizens Bank & Trust

Company of Tampa should proceed under the laws of the State of Florida, or the same should be taken in charge by a chancery receiver to be liquidated, controlled and directed as some Circuit Court should direct and order, subject to innumerable appeals. Rule to show cause was issued. The court's opinion was filed in this case on June 17, 1931, wherein it was stated that the bill of complaint did not state an equity, for the relief prayed, therefore a writ of prohibition was granted.

In the Supreme Court

State ex rel. Cary D. Landis, Attorney General, Relator, vs. The Circuit Court for the Eleventh Judicial Circuit of Florida, and H. F. Atkinson, Judge of said Court, Respondents.

This suit was brought for the purpose of prohibiting the Circuit Court and Judge Atkinson from proceeding in the case of Will Allen vs. The City Trust Co., Guardian Trust Company, et al. On July 6, 1931, an order was entered denying relator's motion for a writ of prohibition. Subsequent to this order relator asked that the cause be reinstated on the docket with reference to the case of the City Trust Company, and thereupon on October 2, 1931, it was ordered that replication to answer of respondents be stricken and that the order reinstating cause be vacated.

In the Supreme Court

State ex rel. Cary D. Landis, Attorney General, vs. The Circuit Court of the Eleventh Judicial Circuit of Florida, et al.

A petition for a writ of prohibition was filed in this suit, wherein it was suggested to the court that the lower court was without jurisdiction to appoint a receiver for the Guardian Trust Company, and asked that a peremptory writ be issued. On May 22, 1931, rule nisi issued. Upon the determination of the proceeding this court held that the lower court was without jurisdiction to appoint a receiver, and peremptory writ issued.

In the Supreme Court

State ex rel. Cary D. Landis, Attorney General, Relator, vs. The Circuit Court of the Eleventh Judicial Circuit of Florida, and Paul D. Barnes, as Circuit Judge, et al., Respondents.

This was an original proceedings for a writ of prohibition challenging the jurisdiction of the Circuit Court to make and enter a certain order, and to further act in the premises. A rule to show cause was issued and answers filed by the respondent Circuit Judge and the respondent members of a certain committee. The relator filed motions to strike certain parts of the answers, and also filed motion for a peremptory writ, which writ was granted on August 5, 1932.

In the Supreme Court

State ex rel. Cary D. Landis, as Attorney General, et al., Relators, vs. Samuel D. Jordan, Clerk of the Circuit Court, Volusia County, et al., Respondents.

A petition for a writ of mandamus was filed in this case wherein it was prayed that said writ be issued directing that the names of the persons contained in the list of five hundred male persons selected and made out by the County Commissioners of Volusia County at a certain meeting be written on separate pieces of paper and roll or fold such pieces of paper so that the names thereon would not be visible and deposit such pieces of paper in a box so constructed that it may be tightly closed and locked, etc., and that the keys to such box be delivered to the Sheriff of Volusia, such box to be the Jury Box of Volusia County. A demurrer and a motion to strike were filed and on May 25, 1931, the court overruled such demurrer and motion.

In the Supreme Court of Florida

State ex rel. Cary D. Landis, Attorney General, et al., Petitioners, vs. Daniel A. Simmons, as Judge, et al, Respondents.

A petition for a writ of prohibition was filed herein wherein it was prayed that Judge Simmons be prohibited and restrained from trying a certain cause therein mentioned and therein claimed to have been disposed of before the State Board of Medical Examiners. Writ of prohibition issued, and on March 17, 1932, an order was made wherein it was decreed that the writ theretofore issued be made permanent.

In the Supreme Court of Florida

State ex rel. Cary D. Landis, Attorney General, et al., Plaintiffs, vs. Honorable George W. Tedder, as Circuit Judge, et al, Defendants.

Suggestions for writ of prohibition was filed in this suit, wherein plaintiffs prayed for judgment and that the State's writ of prohibition be directed to the defendant, George W. Tedder, Judge, directing him to forthwith vacate and discharge a certain temporary injunction, and refuse to take further cognizance of the bill of complaint in said suggestion described. A writ of prohibition issued, returnable to March 18, 1932. On July 9, 1932, this suit was dismissed.

In the Supreme Court of Florida

State ex rel. Wayne F. McJunkin, Relator vs. W. S. McLin, as Motor Vehicle Commissioner, Respondent.

A petition for an alternative writ of mandamus was filed in this case, the main question presented by the petition being the right of the relator to an exemption from the increased motor vehicle license tax imposed by Chapter 15625, Acts of 1931. Alternative writ issued on November 3, 1931, and on December 22, 1931, an order was made denying motion for peremptory writ, and dismissing the alternative writ.

Circuit Court, Leon County

State ex rel. Manatee County Building & Loan Association, Complainant, vs.
H. Clay Crawford, Secretary of State, Defendant.

This is a suit wherein complainant prays that writ of mandamus be granted, commanding and requiring defendant to immediately file in his office a certified copy of resolution increasing the capital stock of complainant, and to duly certify to copy thereof to be filed in office of Clerk of the Circuit Court of Manatee County, Florida. Still pending.

Supreme Court of Florida

State ex rel. Evalyn Montgomery, Relator, vs. Okeechobee County, et al,
Respondents.

A petition for an alternative writ of mandamus was filed in this case and it was prayed, among other things, that respondents be required to pay the bonds and coupons owned by the relator as described in said petition. An alternative writ issued on December 23, 1932, whereupon a motion to quash was filed by the respondents.

In the Supreme Court of Florida

State ex rel. Robert W. Orrell, Relator, vs. Ed Johnson, as Chairman, et al.,
as members of and constituting Board of Bond Trustees of Ocean Shore
Improvement District, et al., Respondents.

A petition for an alternative writ of mandamus was filed in this case, wherein it was prayed that respondents be required to pay certain certificates of indebtedness of the Ocean Shore Improvement District now in the hands of this relator. Alternative writ issued on April 13, and on April 25 a return was filed praying that the said alternative writ be dismissed. Pending on briefs.

Supreme Court of Florida

State ex rel. Palm Beach Company, Relator, vs. Doyle E. Carlton, et al., as
and constituting Board of Administration of the State of Florida, and
Ernest Amos as Secretary of said Board and W. V. Knott, as ex-officio
County Treasurer of Okeechobee County, Respondents.

A petition for an alternative writ of mandamus was filed wherein it was prayed that respondents forthwith make available in the hands of the American Exchange National Bank, New York City, a sum out of the funds allocated for the payment of Okeechobee County road bonds and interest, sufficient to pay the interest coupons owned by the relator, more particularly described in the petition. Alternative writ issued on November 12, 1931. On November 24, a return was filed on behalf of respondents. On March 21, 1932, a motion to dismiss was filed by relator, and on March 22, 1932, the court dismissed without prejudice the alternative writ.

Circuit Court, Leon County

State ex rel. Palm Beach County, Relator, vs. Doyle E. Carlton, Governor, et al., constituting the Board of Administration of the State, etc, Respondents.

A petition for an alternative writ of mandamus was filed in this suit wherein it was prayed that respondents forthwith make available in the hands of the United States Mortgage & Trust Company of New York a sum out of the funds allocated for the payment of Broward County road bonds and interest, sufficient to pay the interest coupons owned by the relators, more particularly described in the petition. Alternative writ issued on August 27, 1931. Answer or return was filed for respondents on September 11, 1931. On March 21, 1932, relator filed a motion to dismiss and on March 22 an order was made granting said motion and dismissing the alternative writ of mandamus theretofore issued.

In the Supreme Court

State ex rel. A. B. Quirk, Relator, vs. Doyle E. Carlton, Chairman, et al, as Board of Administration, etc., Respondents.

A petition for an alternative writ of mandamus was filed in this suit, wherein it was prayed that respondents be required to pay certain bonds of DeSoto County Special Road and Bridge District No. 4. Upon hearing it was ordered that the said petition be denied without prejudice to the right of the relator to apply to the Circuit Judge.

In the Supreme Court

State ex rel. Union Indemnity Co., Relator, vs. W. V. Knott, State Treasurer, Respondent.

A petition for an alternative writ of mandamus was filed herein, upon which alternative writ issued on March 10, 1932, in which writ the State Treasurer was commanded to surrender and deliver to relator certain bonds described in the petition or to show cause why such delivery was not made. Answer was filed on March 22, 1932. Peremptory writ issued August 5, 1932.

Supreme Court of Florida

State ex rel. Woods-Young Company, Complainant, vs. Hon. Geo. W. Tedder and Maryland Casualty Company, Defendant.

This suit was first brought in the United States District Court where the constitutionality of Chapter 11829, Acts of 1927, was attacked, and where the bill for injunction was denied, whereupon a petition for writ of prohibition was filed in May, 1930, in the Supreme Court. Demurrer for defendants was filed and sustained. A petition for writ of certiorari was then filed in the U. S. Supreme Court, which petition was denied April 11, 1932.

Circuit Court, Osceola County

State for the use and benefit of John W. Douglass, Complainant, vs. Southern Suerty Company of New York, et al., Defendants.

A bill of complaint was filed in this suit wherein it was prayed, among other things, that a receiver be appointed by this honorable court to assume the defense of all litigation now pending against the defendant, Southern Surety Co., etc., and that the State Treasurer of the State of Florida be required to hold the securities now held by him as such State Treasurer, consisting of \$75,000.00 of bonds deposited with him under the provisions of Section 6302, Compiled General Laws of Florida, 1927. An order was entered on May 16, appointing a receiver and wherein the State Treasurer was required to hold the securities consisting of \$75,000.00 of bonds, in trust for the purposes for which said trust was created, subject to the order of the Circuit Court in and for Leon County, or the further order of this court.

Civil Court of Record, Hillsborough County

State, for the use and Benefit of Hillsborough County, Plaintiff, vs. Charles T. Friend, Defendant.

This is a civil action brought for the purpose of recovering damages against defendant, as a member of the Board of County Commissioners of Hillsborough County, by reason of his having received and collected from said County excessive salary and compensation during the time named in the declaration.

Civil Court of Record, Hillsborough County

State, for the Use and Benefit of Hillsborough County, Plaintiff, vs. John T. Gunn, Defendant.

This is a civil action brought for the purpose of recovering damages against defendant, as a member of the Board of County Commissioners of Hillsborough County, by reason of his having received and collected from said County excessive salary and compensation during the time named in the declaration. A demurrer to the declaration was filed, and on October 21, 1931, final judgment was rendered in favor of defendant, from which ruling an appeal was entered in the Supreme Court.

Civil Court of Record, Hillsborough County

State, for the use and Benefit of Hillsborough County, Plaintiff, vs. J. W. Lester, Defendant.

This is a civil action brought for the purpose of recovering damages against defendant, as a member of the Board of County Commissioners of Hillsborough County, by reason of his having received and collected from said County excessive salary and compensation during the time named in the declaration.

Civil Court of Record, Hillsborough County

State, for the use and Benefit of Hillsborough County, Plaintiff, vs. W. T. Watkins, Defendant.

This is a civil action brought for the purpose of recovering damages against defendant, as a member of the Board of County Commissioners of Hillsborough County, by reason of his having received and collected from said County excessive salary and compensation during the time named in the declaration. A demurrer to the declaration was filed, and on October 21, 1931, final judgment was rendered in favor of defendants, from which ruling an appeal was entered in the Supreme Court.

Civil Court of Record, Hillsborough County

State, for the use and Benefit of Hillsborough County, Plaintiff, vs. W. T. Williams, Defendant.

This is a civil action brought for the purpose of recovering damages against defendant, as a member of the Board of County Commissioners of Hillsborough County, by reason of his having received and collected from said County excessive salary and compensation during the time named in the declaration. A demurrer to the declaration was filed and on October 21, 1931, final judgment was rendered in favor of defendants, from which ruling an appeal was entered in the Supreme Court.

Circuit Court, Hillsborough County

State, for the use and Benefit of the State of Florida and Hillsborough County, Complainants, vs. Bessie A. Hendry, et al., and United States of America, Defendants.

This suit was filed to foreclose the lien of tax sale certificates held by the Treasurer of the State of Florida, and a lien upon lands in Hillsborough County. The United States was made a party defendant on account of the fact that it claimed a lien for income tax against some party interested in the land upon which the respective certificates were sought to be foreclosed. The District Attorney filed a petition to remove this suit to the District Court of the United States in and for the Southern District of Florida, and an order of removal was entered in the suit on March 10, 1932.

Circuit Court, Hillsborough County

State, for the use and Benefit of the State of Florida and Hillsborough County, Complainants, vs. Mary M. McLaughlin, et al., and the United States of America, Defendants.

This suit was filed to foreclose the lien of tax sale certificates held by the Treasurer of the State of Florida, and a lien upon lands in Hillsborough County. The United States was made a party defendant on account of the fact that it claimed a lien for income tax against some party interested in the land upon which the respective certificates were sought to be foreclosed.

The District Attorney filed a petition to remove this suit to the District Court of the United States in and for the Southern District of Florida, and an order of removal was entered in the suit on March 10, 1932.

Circuit Court, Hillsborough County

State, for the use and Benefit of the State of Florida, and Hillsborough County, Complainants, vs. Merriam S. Robertson, et al., and the United States of America, Defendants.

This suit was filed to foreclose the lien of tax sale certificates held by the Treasurer of the State of Florida, and a lien upon lands in Hillsborough County. The United States was made a party defendant on account of the fact that it claimed a lien for income tax against some party interested in the land upon which the respective certificates were sought to be foreclosed. The District Attorney filed a petition to remove this suit to the District Court of the United States in and for the Southern District of Florida, and an order of removal was entered in the suit on March 10, 1932.

Circuit Court, Duval County

State of Florida, Complainant, vs. The Florida National Bank of Jacksonville, et al., defendants.

A bill of complaint was filed herein praying, among other things, that an accounting be made *in re* various amounts of moneys received and—or collected by the late Frank Brown as Clerk of the Circuit Court of Duval County, by virtue of his said office, and due and owing to the State. An interlocutory order was entered on December —, 1932, wherein it was ordered and directed that \$2,216.32 of the fund, of \$2,227.32 now on deposit in the Florida National Bank of Jacksonville in the name of L. G. Hitchcolk, as Clerk of the Circuit Court, be treated by the said Hitchcolk as a part of the official receipts of said office and that the claim of Frank Brown, Jr., be denied, it being further ordered that the said Hitchcolk turn over to A. W. Knight, receiver, the sum of \$11.00 of said funds, and that said Hitchcolk, as Clerk of the Circuit Court, be directed to treat the balance of said agency fund of \$2,216.32 as a part of the official receipts of said office to be accounted for as required by law, by said Hitchcolk as Clerk of the Circuit Court, Duval County, Florida.

Circuit Court, Escambia County

State of Florida, Complainant, vs. Overstate Transportation Company, Respondent.

This suit was brought for the purpose of collecting license tax on certain motor busses operated for hire by the respondent while engaged in interstate business. A decree was entered wherein it was ordered and decreed that the equities were with the defendant and that the complainant was not entitled to the relief prayed, and that the bill of complaint be dismissed, whereupon an appeal was taken to the Supreme Court, where the judgment of the lower court was reversed.

Circuit Court, Gulf County

State of Florida, Complainant, vs. St. Andrews Bay Lumber Company, et al., Defendants.

This suit was brought for the purpose of enjoining the defendants from cutting timber from certain lands in Gulf County upon which taxes had not been paid. Temporary injunction was granted on September 10, 1931.

United States District Court, Southern District of Florida

John M. Sutton, Complainant, vs. State Board of Education, and Trustees, I. I. Fund, et al., Defendants.

This suit is based on a certificate of State Board of Education to B. F. Hampton and arrangement of the Trustees of the I. I. Fund to sell certain lands to John M. Murrell as sovereignty lands. Pending.

Circuit Court, Leon County

Tampa & Gulf Coast Railroad Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoyn and restrain the collection of school district taxes for the year 1926. Testimony was taken, briefs filed and arguments had before Judge Jones on July 22, 1930, but thus far no decision has been rendered.

Circuit Court, Leon County

Tampa Northern R. R. Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of school district taxes for the year 1926. Testimony was taken, briefs filed and arguments had before Judge Jones on July 22, 1930, but thus far no decision has been rendered.

Circuit Court, Leon County

Tavares & Gulf Railroad Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of school district taxes for the year 1926. Appearance for the defendant was filed on December 3, 1928. Testimony was taken, briefs filed and arguments had before Judge Jones on July 22, 1930, but thus far no decision has been rendered.

Circuit Court, Leon County

Park Trammell, et al., as the Board of Commissioners of State Institutions, Plaintiffs, vs. DeLeon Naval Stores Company, a Corporation, et al., Defendants.

This is a suit brought against the DeLeon Naval Stores Company, a corporation, lessee of State prisoners, and its bondsmen for a balance due

by it on account of its contract with the Board of Commissioners of State Institutions for the lease of such prisoners. The amount due was \$6,060.74. The executors of the estate of J. B. Conrad, deceased, have paid to the Board the sum of \$2,000.00, the amount of the obligation of this decedent on the bond. The case is still pending before the court.

Circuit Court, Palm Beach County

Trustees Internal Improvement Fund, Complainants, vs. H. N. Burton, et al., Defendants.

This is a suit brought to foreclose a mortgage given by the defendants to complainants covering certain lands in Palm Beach County, Florida, more particularly described in the bill of complaint. Final decree was entered on November 15, 1932, in favor of complainants, and, on December 5, 1932, the property was sold, Master's report confirmed, and Master's deed delivered to complainants.

Circuit Court, Palm Beach County

Trustees Internal Improvement Fund, Complainants, vs. T. J. Campbell, et al., Defendants.

This is a suit brought to foreclose a mortgage given by the defendants to complainants covering certain lands in Palm Beach County, Florida, more particularly described in the bill of complaint. Final decree was entered on December 5, 1932, in favor of complainants, and on January 2, 1933, the property was sold, Master's report confirmed, and Master's deed delivered to complainants.

Circuit Court, Palm Beach County

Trustees Internal Improvement Fund, Complainants, vs. Andrew Carter, et al., Defendants.

This suit was brought for the purpose of foreclosing a mortgage given by the defendants to complainants covering certain lands in Palm Beach County, Florida, more particularly described in the bill of complaint. Final decree was entered on December 5, 1932, in favor of complainants, and on January 2, 1933, the property was sold, Master's report confirmed, and Master's deed delivered to the complainants.

Circuit Court, Palm Beach County

Trustees Internal Improvement Fund, Complainants, vs. S. A. Chesnutt, et al., Defendants.

This suit was brought for the purpose of foreclosing a mortgage given by the defendants to complainants covering certain lands in Palm Beach County, Florida, more particularly described in the bill of complaint. Final decree was entered on November 8, 1932, in favor of complainants, and on December 5, 1932, the property was sold, Master's report confirmed, and Master's deed delivered to the complainants.

Circuit Court, Palm Beach County

Trustees Internal Improvement Fund, Complainants, vs. G. C. Hooker, et al., Defendants.

This is a suit brought to foreclose a mortgage given by the defendants to complainants covering certain lands in Palm Beach County, Florida, more particularly described in the bill of complaint. Final decree was entered on December 5, 1932, in favor of complainants, and on January 2, 1933, the property was sold, Master's report confirmed, and Master's deed delivered to complainants.

Circuit Court, Palm Beach County

Trustees Internal Improvement Fund, Complainants, vs. W. R. Hooker, et al., Defendants.

This is a suit brought to foreclose a mortgage given by the defendants to complainants covering certain lands in Palm Beach County, Florida, more particularly described in the bill of complaint. Final decree was entered on December 6, 1932, in favor of complainants, and on January 2, 1933, the property was sold, Master's report confirmed, and Master's deed delivered to complainants.

Circuit Court, Palm Beach County

Trustees Internal Improvement Fund, Complainants, vs. Harold J. McCaskill, et al., Defendants.

This suit was brought for the purpose of foreclosing a mortgage given by the defendants to complainants covering certain lands in Palm Beach County, Florida, more particularly described in the bill of complaint. A stipulation has been filed allowing the defendants until January rule day, 1933, within which to file answer.

Circuit Court, Palm Beach County

Trustees Internal Improvement Fund, Complainants, vs. J. R. Martin, et al., Defendants.

This suit was brought for the purpose of foreclosing a mortgage given by the defendants to complainants covering certain lands in Palm Beach County, Florida, more particularly described in the bill of complaint. Final decree was entered on November 8, 1932, in favor of complainants, and on December 5, 1932, the property was sold, Master's report confirmed, and Master's deed delivered to the complainants.

Circuit Court, Palm Beach County

Trustees Internal Improvement Fund, Complainants, vs. J. N. Morris, et al., Defendants.

This is a suit brought to foreclose a mortgage given by the defendants to complainants covering certain lands in Palm Beach County, Florida, more particularly described in the bill of complaint. Final decree was entered on

November 8, 1932, in favor of complainants, and on December 5, 1932, the property was sold, Master's report confirmed, and Master's deed delivered to complainants.

Circuit Court, Palm Beach County

Trustees Internal Improvement Fund, Complainants, vs. S. G. Parker, et al., Defendants.

This is a suit brought to foreclose a mortgage given by the defendants to complainants covering certain lands in Palm Beach County, Florida, more particularly described in the bill of complaint. Final decree was entered on December 6, 1932, in favor of complainants, and on January 2, 1933, the property was sold, Master's report confirmed, and Master's deed delivered to complainants.

Circuit Court, Palm Beach County

Trustees Internal Improvement Fund, Complainants, vs. E. B. Rice, et al., Defendants.

This suit was brought for the purpose of foreclosing a mortgage given by the defendants to complainants covering certain lands in Palm Beach County, Florida, more particularly described in the bill of complaint. Final decree was entered on December 6, 1932, in favor of complainants, and on January 2, 1933, the property was sold, Master's report confirmed, and Master's deed delivered to the complainants.

Circuit Court, Palm Beach County

Trustees Internal Improvement Fund, Complainants, vs. South Shores Farm Company, Defendants.

This suit was brought for the purpose of foreclosing a mortgage given by the defendants to complainants covering certain lands in Palm Beach County, Florida, more particularly described in the bill of complaint. Final decree was entered on November 8, 1932, in favor of complainants, and on January 2, 1933, the property was sold, Master's report confirmed, and Master's deed delivered to complainants.

Circuit Court, Palm Beach County

Trustees Internal Improvement Fund, Complainants, vs. E. S. West, et al., Defendants.

This suit was brought for the purpose of foreclosing a mortgage given by the defendants to complainants covering certain lands in Palm Beach County, Florida, more particularly described in the bill of complaint. Final decree was entered on November 8, 1932, in favor of complainants, and on January 2, 1933, the property was sold, Master's report confirmed, and Master's deed delivered to the complainants.

Circuit Court, Palm Beach County

Trustees Internal Improvement Fund, Complainants, vs. R. G. West, Defendant.

This suit was brought for the purpose of foreclosing a mortgage given by the defendants to complainants covering certain lands in Palm Beach County, Florida, more particularly described in the bill of complaint. Final decree was entered on November 8, 1932, in favor of complainants, and on January 2, 1933, the property was sold, Master's report confirmed, and Master's deed delivered to the complainants.

In the Supreme Court

James Edward Tyson, Petitioner, vs. Frank Stoutamire, Sheriff, Respondent.

The petitioner was arrested by respondent for a violation of Paragraph 4 of Sec. 1011 of the Revised General Statutes, as amended by Chapter 15625, and thereupon a petition for a writ of habeas corpus was filed and writ issued. The sole question involved being the validity of said law. The Supreme Court on March 21, 1932, held said law to be constitutional and the petitioner was remanded.

In the District Court of the U. S., Southern District of Florida

Union Mortgage and Finance Corp., Complainant, vs. Philip P. Licata, et al., Defendants.

This is a suit brought for the purpose of foreclosing a certain mortgage, the State being made a party defendant because it claimed some interest in and to the land covered by said mortgage sought to be foreclosed. An answer on behalf of the State was filed. Order of dismissal filed February 13, 1931.

District Court of the United States, Southern District of Florida, Tampa Division

United States of America ex rel. Municipal Securities Corporation of America, Relator, vs. Doyle E. Carlton, Ernest Amos, and W. V. Knott, as and constituting the Board of Administration, etc., and Ernest Amos, as Secretary of said Board, and W. V. Knott as Ex-Officio County Treasurer of Charlotte County, Respondents.

This is an action in mandamus brought by the relator to compel these respondents to apply the funds held in their custody for Charlotte County, Florida, to the payment and satisfaction of a judgment recovered in this court by the relator against Charlotte County on said road bonds theretofore issued by Charlotte County. Consent decree was entered, respondents agreeing to pay to relator the sum of \$12,030.00 in partial payment of said judgment. Suit dismissed March 27, 1932.

District Court of the United States, Northern District of Florida

United States of America ex rel. H. C. Rorick, et al., Complainants, vs. W. V. Knott, State Treasurer, as Custodian of Funds belonging to the Board of Commissioners Everglades Drainage District, Respondent.

A petition for an alternative writ of mandamus was filed in this suit, wherein it was prayed that respondent pay over to petitioners for credit on a certain judgment all funds in his possession belonging to the Board of Commissioners of said Drainage District. Alternative writ issued on May 28, 1932. A return, or answer, was filed on behalf of respondent on June 20, 1932.

District Court of the United States, Northern District of Florida

Wabash College, a corporation, et al., Complainant, vs. Bay County, Florida, and W. V. Knott, State Treasurer, as Ex-Officio County Treasurer of Bay County, et al, Defendants.

This suit sought to remove a cloud upon the title to the \$1,000,000.00 bond issue, such cloud arising from the injunction proceedings in the Circuit Court of the 28th Judicial Circuit of Florida. A motion to dismiss was filed on behalf of Mr. Knott, and the court ruled that the defendant, W. V. Knott, State Treasurer, as ex-officio County Treasurer, was not shown to be a party to the creation of such cloud and that the bill should be dismissed as to him, which motion was sustained and suit dismissed as to him on June 17, 1932.

Circuit Court, Alachua County

Mrs. L. Wilkinson and her Husband, I. I. Wilkinson, Complainants, vs. C. C. Woodward and John Stevens, Defendants.

A bill was filed in this case wherein it was prayed that this court grant unto complainants the State's writ of injunction enjoining the said defendants, etc., from entering upon and over the lands of your orators and interfering with their use and occupation thereof, and that said injunction upon hearing of said cause be made permanent. A demurrer on behalf of the defendants was filed and the court sustained the demurrer and denied the injunction, from which ruling an appeal was entered in the Supreme Court where the judgment of the lower court was affirmed on May 2, 1932.

Circuit Court, Duval County

William Lloyd Garrison Progressive Odd Fellows of Florida, Inc., et al., Complainants, vs. Northern Investment Co., et al., Defendants.

This was a suit brought for the purpose of having certain tax sale certificates cancelled on the ground that such certificates covered property that was exempt from taxation. A motion to dismiss was filed on behalf of the State Treasurer and Comptroller.

United States District Court, Northern District of Florida

Wilmington and Dover Corporation, Complainant, vs. Trustees Internal Improvement Fund, Defendants.

This suit was brought for the purpose of restraining and enjoining the defendants from erecting a culvert under the United States Levee for the purpose of installing pumps to reclaim Pelican Bay. An injunction was granted on November 9, 1932, and on November 30, 1932, said injunction was dissolved.

Circuit Court, Dade County

Mattie Sue Wilson, Complainant, vs. Trustees I. I. Fund, et al., Defendants.

This suit seeks the cancellation of a tax deed based on Everglades Drainage District tax certificate. An answer was filed on behalf of the defendants and a motion to strike was filed by complainant, which motion was sustained on February 5, 1932, from which ruling an appeal was entered in the Supreme Court. Judgment of the lower court was reversed on December 15, 1932, whereupon a petition for a rehearing was filed. On January 11, 1933, the court denied the petition for a rehearing, but modified the original order of December 15, 1932, in requiring exhibit of deed in lower court.

Circuit Court, Pinellas County

George C. Winneberger, Complainant, vs. Warren A. Potter, et al, Defendants.

This is a suit brought to foreclose a mortgage covering property in Pinellas County, the State being made a party by reason of prior tax liens held by the State. An answer has been filed on behalf of the State. Confirmation and deficiency judgment filed November 5, 1931.

Circuit Court, Liberty County

A. H. Wolyn, Plaintiff, vs. Apalachicola Northern Railroad Co., et al, Defendants.

This is a suit brought to recover damages alleged to have been sustained by failure of defendants to place cars for the shipment of certain Japanese seed cane of the value of \$1,694.59, with interest, and \$11,260.00, with interest. Pending on demurrer to amended declaration.

Circuit Court, Highlands County

M. W. Woolsey, Complainant, vs. Ernest Amos, as Comptroller, et al., Defendants,

This suit was brought for the purpose of having decreed the amount of taxes due for the years 1926, 1927 and 1928, etc., and to have certain other taxes decreed illegal and void, and that complainant be allowed to redeem said lands and that certain tax certificates be cancelled. Answer for defendant, Ernest Amos, was filed. Still pending.

Circuit Court, Manatee County

Wyman & Green & Gilmore, Complainants, vs. Trustees I. I. Fund, et al., Defendants.

This is a suit to test the right of the Trustees of the I. I. Fund to convey certain sovereignty lands in the neighborhood of Anna Marie Key, the matter of location being involved.

In the United States District Court, Southern District of Florida, Tampa Division

I. Zemurray, Complainant, vs. Del Oro Groves, et al., Respondents.

A bill of complaint was filed in this suit wherein it was prayed among other things that a substitute trustee be appointed in lieu of the Guaranty Title & Trust Company because said Trust Company had become insolvent and closed its doors on or about June, 1930, and its affairs now being in the hands of Ernest Amos, Comptroller, and that said Comptroller be required to submit to said successor trustee an accounting, etc. An answer on behalf of the Comptroller was filed. Decree for complainant; R. D. Robinson appointed trustee.

In the Circuit Court, Volusia County

Margaret R. Zimmerschied, Inc., Complainant, vs. C. L. Vining, as Receiver of East Coast Bank & Trust Co., et al., Defendants.

This is a suit brought for the purpose of having returned to Complainant the amount of \$10,000 held by the receiver, which amount it is claimed was in his personal safety deposit box, which said safety deposit box was in a vault located in the banking house of the East Coast Bank & Trust Company, etc. An appearance was filed on behalf of the defendants, Ernest Amos, as Comptroller, and W. V. Knott, as State Treasurer. Dismissed June 18, 1932, on motion of complainant.

XII.

QUO WARRANTO AND OTHER EXTRAORDINARY
REMEDIES

Authority was granted by the Attorney General to the parties whose names appear below to institute these proceedings. A short statement setting out the purpose of the suit is made in each case.

Hon. Linton M. Collins, Miami, Fla., January 2, 1931.

An information was filed in this suit to test by what right or authority the Judge of the Criminal Court of Record of Dade County is discharging the duties of said Judge, and it was prayed that said Judge show by what warrant of authority he claims to act as Judge of said County, and to discharge the duties of said office, and by what right he claims the salary and emoluments of said office.

Hon. Vincent C. Giblin, Miami, Fla., January 2, 1931.

An information was filed in this suit for the purpose of having declared unconstitutional and void a certain legislative enactment which resulted in the inclusion of certain property in the corporate limits of the Municipality of Coral Gables.

Messrs. Fred Botts, and Loftin, Stokes & Calkins, Miami, Fla., January 9, 1931.

An information was filed in this suit wherein it was claimed that the pretended appointment of one Fred Botts to the office of Assistant County Solicitor of the Criminal Court of Record of Dade County, Florida, to "hold during the pleasure of the Governor," violates the Constitution of the State of Florida, and is null and void, and that the said Fred Botts usurps said office without lawful authority to the prejudice and wrong of the people of the State of Florida.

Messrs. Gaines & Futch, Leesburg, Fla., January 12, 1931.

Authority was granted to bring this suit for the purpose of ascertaining by what right or authority one Frank Robertson claims to exercise and perform the liberties, privileges and duties of the office of Chief of Police of City of Leesburg, Lake County, Florida.

Fred H. Davis, Attorney General of Florida, February 3, 1931.

Authority was granted to bring this suit to test by what right or authority the United American Society, Inc., exercises and uses the franchise granted in and by a certain charter dated October 8, 1930.

Hon. W. D. Bell, Arcadia, Fla., February 18, 1931.

An information was filed in this suit to test by what right or authority the corporate authorities of the City of Sebring, in the County of Highlands, are acting as such corporate authorities, the information setting forth that no election was called for the election of these corporate authorities as provided by a certain act of the Legislature of 1929, known as Chapter 14371.

Messrs. Kelly & Casler, Clearwater, Fla., February 19, 1931.

The information in this suit alleged that the Friendship Benevolent Society is engaged in funeral benefit insurance without first having obtained a certificate of authority from the State Treasurer of the State contrary to the statutes in reference to incorporation of such societies and without any warrant, charter or grant therefor.

Messrs. Winters, Foskett & Wilcox, West Palm Beach, Fla., March 3, 1931

An information was filed in this suit wherein it was claimed that the Town of Jupiter unlawfully and illegally and without warrant, asserted the right to levy and collect taxes upon certain lands embraced within its boundary, and to pass ordinances relating thereto and to exercise municipal jurisdiction, powers and authority under the statutes of the State of Florida, to the prejudice and wrong of the people of the State.

Hon. Lawrence R. Milton, Jacksonville, Fla., March 3, 1931.

The information filed in this suit alleged that the City of South Jacksonville at the present time and for many months past, in the County of Duval, State of Florida, without lawful authority, has used and still uses without lawful authority, the privileges, powers, functions and franchises of a municipal corporation over certain territory in said information described to the damage and prejudice of the people.

Messrs. McCune, Hiaasen & Fleming, Fort Lauderdale, Fla., April 11, 1931.

The purpose of this suit is to remove a considerable acreage of farm lands, and other uninhabited lands, from the limits of the City of Pompano.

Hon. Arthur S. Friedman, Miami, Fla., July 9, 1931.

This suit was filed for the purpose of determining the question of whether or not the Town of Fulford in the County of Dade has been abolished by Act of the Legislature known and designated as Chapter 15223, Acts of 1931.

Messrs. Tilden & Hays, Orlando, Fla., August 3, 1931.

This is a suit brought for the purpose of testing by what right or authority the City of Orlando annexed certain territory in the information mentioned to said city.

Mr. Clyde W. Atkinson, Tallahassee, Fla., August 3, 1931.

This is a suit brought seeking to have determined by what warrant or authority of law the Trustees of Special School District Number Seven, Wakulla County, and the Board of Public Instruction of Wakulla County, claim to exercise offices, franchises, liberties and powers as Trustees of Special Tax School District No. 7 of said County.

Messrs. E. G. P. Brigham and R. A. Rasco, Miami, Fla., August 7, 1931.

This suit was brought to test by what right or authority one Frank Markle claimed the office of Superintendent of Yacht Docks, at Miami.

Mr. W. C. Price, Miami, Fla., August 12, 1931.

This suit was brought for the purpose of testing the right to the office of Chief of Police of the City of Miami.

Mr. James M. Carson, Miami, Fla., August 14, 1931.

This suit was brought to test by what right, warrant or authority of law one C. L. Wheat claims to exercise the liberties, privileges and authority of a public officer as Auditor and Purchasing agent for Dade County, or as Purchasing Agent in and for Dade County.

Hon. Paul C. Taylor, Miami, Fla., August 25, 1931.

This suit was brought against the individuals comprising the City Council of South Miami to test the constitutionality of House Bill No. 136-X, passed at the First Extraordinary Session of the Legislature of 1931.

Messrs. Blackwell, Donnell & Moore, West Palm Beach, Fla., August 27, 1931.

The purpose of this suit is to eliminate some land remote from the inhabitable portion of the City of West Palm Beach, which said land it is claimed should never have been within the corporate limits.

Hon. J. McHenry Jones, Pensacola, Fla., August 31, 1931.

Authority was granted to bring suit in Quo Warranto against the Councilmen, if and when elected, of the City of Pensacola, Florida.

Hon. Angus Sumner, Fort Pierce, Fla., September 18, 1931.

This suit was brought to test by what right or authority of law or otherwise the American Benevolent Society holds, exercises and uses a certain franchise for the uses and purposes set forth in the information.

Messrs. A. C. Brooks and J. Tom Watson, Tampa, Fla., November 4, 1931.

This suit was brought to test by what right or authority the Clerk of the Circuit Court, and Clerk of the Criminal Court of Record, and Ex-Officio Clerk of the Civil Court of Record, Hillsborough County, proceeded

to transfer from the progress dockets of the Civil Court of Record to the progress dockets being created and made for the Circuit Court all of the pending cases and all actions at law now pending in said Civil Court of Record of said County, etc., for the purpose of having such transferred cases and actions at law tried and disposed of in said Circuit Court, instead of in the said Civil Court.

Mr. R. B. Moseley, Jacksonville, Fla., November 6, 1931.

This suit was brought for the purpose of testing by what right or authority the Florida Mutual Benefit Corporation of Tampa claimed to be doing business in this State.

Mr. Wm. H. Jeter, Atlantic National Bank Bldg., Jacksonville, Fla., November 6, 1931.

An information in the nature of Quo Warranto was filed in this suit wherein it was alleged that the respondent Merchants and Bankers Mutual Benefit Corporation was using its charter for purposes inconsistent with those stated in said charter, and for purposes not authorized by law in the case of corporations not for profit, etc.

Messrs. Peterson, Carver & Langston, Lakeland, Fla., December 26, 1931.
(Two Suits).

This suit was instituted for the purpose of determining by what warrant or authority of law the respondent, the Town of Davenport, claims to exercise, employ and perform the functions, powers, privileges and franchises of a municipality in and upon the lands of the co-relators in said information mentioned and described.

Mr. Pat Odum, Jacksonville, Fla., December 30, 1931.

An information was filed in this suit praying, among other things, that Duval County be required to file its answer setting forth by what warrant or authority of law it claims to exercise the franchises, liberties and powers to collect tolls and charges for the use of the bridge in said County across the St. Johns River, constructed under and in pursuance of Chapter 7462 of the Laws of Florida.

Mr. C. A. Savage, Jr., Ocala, Fla., January 11, 1932.

This is a suit brought for the purpose to determine by what right or authority the defendants claim to be officials of the Town of Anthony, Marion County, and under such usurped authority do perform and exercise all the liberties, privileges and franchises of an incorporated town or municipality, etc.

Hon. S. Pierre Robineau, Miami, Fla., January 20, 1932.

This suit was brought for the purpose of having excluded from the City of Miami Beach certain lands included in its extension of limits under Chapter 10845 of the Acts of the Legislature of 1925.

Hon. Tom B. Stewart, DeLand, Fla., January 28, 1932.

An information was filed wherein it was prayed that E. B. Webb, member of the Town Council of the Town of Orange City, be required to answer by what warrant he claims to hold, use, exercise and enjoy the office of Town Councilman of said city.

Hon. Fred Pine, Miami, Fla., January 30, 1932.

Consent was granted to bring a suit to test by a bill of review certain proceeding in a divorce suit lately pending in Dade county.

Messrs. Cassels & Trinkle, Plant City, Fla., February 5, 1932.

Authority was granted to bring a suit wherein it was sought to test the right of the Municipal Judge of the City of Plant City to hold such office.

Hon. D. L. Southard, West Palm Beach, Fla., February 15, 1932.

By consent an information was filed praying that the Town of Lantana, a municipal corporation, be required to answer by what grant, warrant or authority of law it claims to exercise, employ and perform the functions, powers and privileges of a municipality in, upon and over certain lands in said information described.

Hon. Alto Adams, Fort Pierce, Fla., February 23, 1932.

Authority was granted to bring a suit wherein it was sought to have the City of Vero Beach, a municipal corporation, answer by what right or authority of law it holds or exercises its corporate franchise over certain property described in the information.

Messrs Hull, Landis & Whitehair, DeLand, Fla., February 27, 1932.

Authority was granted to file an information against the Purchasing Agent of Volusia County, requiring him to answer by what right or authority he is exercising the duties of said office, and the franchises in said information complained of.

Hon. John M. Murrell, Miami, Fla., February 29, 1932.

Authority was granted to bring a suit to test by what right or authority of law one R. E. L. Pryor claims to be a public officer of the Republican Executive Committee of the State of Florida, and the chairman of said committee.

Hon. Vincent C. Giblin, Miami, Fla., March 7, 1932.

This suit was brought for the purpose of having declared unconstitutional and void certain portions of Chapter 11520, Acts of 1925, wherein additional territory was authorized to be added to the City of Homestead.

Messrs. Zewadski & Pierce, Tampa, Fla., March 15, 1932.

Authority was granted to bring a suit to test by what warrant or authority of law the members of the Board of Elections for the City of Tampa claimed to exercise the offices, franchises, liberties, powers and authority set out in the information filed in said suit.

Hon. O. S. Miller, West Palm Beach, Fla., March 17, 1932.

Authority was given to bring this suit against the Town of Pahokee, the information filed praying that said town be required to answer by stating what right and authority, if any, it claimed to exercise jurisdiction over certain lands described and set forth in the information, etc.

Messrs. Loftin, Stokes & Calkins, Miami, Fla., March 24, 1932.

Authority was granted to bring a suit wherein the validity of the action of the Board of County Commissioners of Dade County in abolishing old Commissioners District Number Four, and creating a new District Number Four was tested.

Messrs. Hull, Landis & Whitehair, DeLand, Fla., April 11, 1932.

Authority was granted to bring this suit against the DeWitt C. Jones Company to test by what authority it exercises the powers and franchises of a sick and funeral benefit insurance company in this State.

Hon. Vincent C. Giblin, Miami Fla., April 13, 1932.

Authority was granted to bring this suit against the Miami Boxing Commission to test by what right or authority such commission refuses to issue a permit to conduct boxing exhibitions by the Disabled American Veterans' Association of Miami.

Hon. H. J. Quincy, West Palm Beach, Fla., May 19, 1932.

Authority was granted to institute a suit against the Town of Pahokee, a municipal corporation, for the purpose of ascertaining by what right and authority, if any, it claims to exercise jurisdiction over the lands of the co-relators in the information described, and to further ascertain if Chapter 9872, Laws of Florida, 1923, is not unreasonable, oppressive, arbitrary and a flagrant abuse of legislative power, contrary to constitutional rights and privileges of said co-relators.

Hon. Mitchell D. Price, Miami, Fla., May 30, 1932.

Authority was granted to bring a suit against the Town of North Miami in an effort to have excluded from said town 1,008 acres of land now lying within the limits of said town.

Messrs. Beall & Farish, West Palm Beach, Fla., May 31, 1932.

Authority was granted to bring a suit to test the constitutionality of Chapter 10350, Laws of 1925, it being alleged in the information that under and by authority of this law the Town of Boynton, a municipal corporation, has unlawfully exercised, had dominion over and usurped and is attempting to unlawfully exercise the privileges and franchises of a municipality in, upon, on, and over certain lands in the information described.

Messrs. F W. Pope and T. E. Fitzgerald, Daytona Beach, Fla., June 2, 1932.

Authority was granted to bring suit against Ralph U. Green, et al, a corporate body under the name of the Board of Commissioners of the Halifax Hospital District in Volusia County, to test Chapter 11272, Acts of 1925, it being claimed that said Board has never been created according to law and is without existence because said law is unconstitutional and void.

Messrs. Caraballo, Graham & Cosio, Tampa, Fla., June 15, 1932.

Authority was granted to bring a suit against Manuel Alvarez, Edward Miller and Isidore Leon, as President-Treasurer, Secretary and Vice-President, respectively, of Grand Orient Restaurant, Inc., a Florida corporation, to test by what right or authority said officers claim to act as such.

Mr. A H. Furr, Miami, Fla., June 17, 1932.

Authority was granted to bring this suit on behalf of John R. Brain, who claims title as Republican Committeeman against Marilyn Hauer.

Messrs. Grimes & Rowe, Palmetto, Fla., June 24, 1932.

Authority was granted to bring suit against William Fisher and Harry Condo, as Trustee of the Ellenton Special Tax School District No. 8, to test by what warrant or authority they claim to use, enjoy, exercise and perform the franchises, functions, liberties and powers as such officers.

Hon. Clyde W Atkinson, Tallahassee, Fla., July 5, 1932.

Authority was granted to bring a suit against C. W. Hammon, member of State Executive Committee for the Republican Party of Leon County, et al., to test an election held on June 7, 1932, the petition alleging that said election was not regular and legal, and was not held in accordance with the provisions of the law.

Messrs. Hull, Landis & Whitehair, DeLand, Fla., July 14, 1932.

Authority was granted to file a petition in mandamus against the County Canvassing Board of Primary Elections of Volusia County, wherein it was prayed that said Board be required to notify the chairman of the Volusia County Democratic Executive Committee of the death of two certain candidates who were nominated to hold certain offices in Volusia County, in order that said Committee could, by majority vote, nominate a candidate for each of said offices, and cause the names of such nominees to be placed upon the official ballot to be voted at the ensuing general election.

Messrs. Oppenborn & Mincer, Miami, Fla., July 30, 1932.

Authority was granted to bring this suit against the City of Hialeah in an effort to have excluded from the said City certain lands in the information described.

Hon. Frank Redd, Sarasota, Fla., August 1, 1932.

Authority was granted to bring this suit against the City of Sarasota to test the constitutionality of Chapter 13463, Acats of 1927, *in re*: Extension of city limits to include certain territory in the information described.

Cary D. Landis, Attorney General, August 1, 1932.

This suit was instituted against The National Mutual Benefit Association by reason of the fact that this Company procured a permit from the Secretary of State to do business as a corporation not for profit, but has not complied with the statutes necessary to entitle it to do business as an insurance company.

Mr. Cyrus H. Smithdeal, Waldo, Fla., September 19, 1932.

This suit was brought against Maceo Hicks in an effort to ascertain by what right or authority he has entered and erected two boat-houses and a wharf upon certain portions of the lake bed of Santa Fe, Alachua County.

Hon. W. J. Gardiner, Daytona Beach, Fla., October 3, 1932.

This suit was brought against the members of the Board of Trustees of the Volusia County Fair in an effort to ascertain by what right or authority they claim and assume to act as such Trustees and praying that an accounting be made of all moneys in their possession and acquired by virtue of taxes levied and collected under and by virtue of Chapter 15560, Acts of 1931.

Hon. W. J. Gardiner, Daytona Beach, Fla., October 3, 1932.

This suit was brought against Trustees of the Volusia County Legion Armistice Day Exposition in an effort to ascertain by what right or authority they claim and assume to act as such Trustees, and praying that an accounting be made of all moneys in their possession and acquired by virtue of taxes levied and collected under and by virtue of the Chapter 15562, Acts of 1931.

Hon. W. J. Gardiner, Daytona Beach, Fla., October 3, 1932.

This suit was brought against the Board of Trustees of the Volusia Summer Expositions in an effort to ascertain by what right or authority they claim and assume to act as such Trustees, and praying that an accounting be made of all moneys in their possession and acquired by virtue of taxes levied and collected under and by virtue of Chapter 15561, Acts of 1931.

Hon. Robert T. Dewell, Haines City Fla., October 26, 1932.

Authority was granted to bring this suit against the City of Haines City, and said City required to answer by what warrant or authority it claims to

exercise, enjoy and perform the functions, powers, privileges and franchises of a municipality in, to and upon certain land belonging to relator, Haines City Heights, Inc., etc.

Hon. W. F. Himes and Hon. Wm. C. Pierce, Tampa, Fla., November 4, 1932.

Authority was granted to bring this suit against Charles F. Blake, and it was prayed in the information that he answer to the State by what warrant or authority of law he, the said Blake, claimed to exercise the office, franchises, liberties, powers and authority of Trustee of Consolidated Special Tax School District No. 4 in Hillsborough County, Florida.

Messrs Hull, Landis & Whitehair, DeLand, Fla., November 4, 1932.

Authority was granted to bring this suit against Wilhelm Undertaking Company, and it was prayed in the information that said Company be required to answer to the State by what warrant, right or authority of law or otherwise it holds, exercises and uses the charter mentioned in the information for the purposes therein set forth, and claims to exercise and use the franchises, liberties and powers therein mentioned.

Hon. T. H. Getzen, Dade City, Fla., November 15, 1932.

Authority was granted to bring this suit against W. C. Gamble, wherein it was prayed that respondent be required to answer by what warrant or authority of law he claims to exercise the liberties, privileges and duties of the office of Chief of Police of the City of Dade City.

Hon. Jno. H. Treadwell, Arcadia, Fla., November 23, 1932.

Authority was granted to bring this suit against Everett B. Way, and it was prayed in the information that said Way be required to answer by what warrant or authority of law he claims to exercise the liberties, privileges and duties of the offices of Town Clerk, Tax Assessor, Tax Collector and Treasurer of the Town of Eagle Lake.

Hon. Jno. H. Treadwell, Arcadia, Fla., November 23, 1932.

Authority was granted to bring suit against W. Z. Carson to test the question as to whether or not he is qualified and entitled to certificate of election as a candidate for Clerk of the Circuit Court of Highlands County.
Hon. C. L. Waller, Tallahassee, Fla., December 10, 1932.

Authority was granted to bring suit against the Overseas Bridge Corporation in order that the court might determine as to whether or not the franchise granted relator, George J. Rosenthal, to construct, own and operate a toll bridge or toll bridges, etc., over the waters of Monroe County, Florida, in the information filed more particularly described, is exclusive and valid, and whether or not the said Overseas Bridge Corporation is usurping the rights, powers, privileges and franchises rightfully belonging to the said relator.

XIII.

TABULATED REPORT OF CRIMINAL CASES

Handled by the Attorney General in which Opinions were Filed by the Supreme Court During the Years 1931-1932

CASES DISPOSED OF DURING JANUARY TERM, 1931

Name of Offender	Offense	County	Court	Disposition
Caroline Antrobus	False Pretense	Dade	Criminal	Reversed
C. A. Austin	Manslaughter	Duval	Criminal	Reversed
J. C. Blackburn	Drunkenness	Washington	Circuit	Affirmed
J. T. Blackwell	Murder, 1st Degree	Calhoun	Circuit	Affirmed
J. W. Buchanan	Habeas Corpus	Union	Circuit	Re-Affirmed
A. C. Brown	Concealing Personal Property	Walton	Circuit	Affirmed
Geo. G. Browning	Converting Funds, etc.	Martin	Circuit	Reversed
L. B. Bryant et al (2 cases)	Arson	Lee	Circuit	Remanded
William Raymond Carver	Murder, 1st Degree	Highlands	Circuit	Affirmed
William Raymond Carver	Habeas Corpus	Highlands	Circuit	Denied
William Raymond Carver	Murder, 1st Degree	Highlands	Circuit	Reversed
Angelo D'Allesandro	Violation Liquor Law	Lee	Circuit	Remanded
Angelo D'Allesandro	Violation Liquor Law	Lee	Circuit	Affirmed
Frederick G. Deiterle	Murder, 2nd Degree	Dade	Criminal	Reversed
Ralph Dixon et al.	Aggravated Assault	Brevard	Circuit	Affirmed
Fred O. Eberhart .....	.....	Highlands	Circuit	Reversed
Chris Fagg	Habeas Corpus	Palm Beach	Circuit	Reversed
John L. Fouts	Fraudulent Conversion	Polk	Criminal	Affirmed

L. M. Futch, Jr.	Habeas Corpus	Polk	Circuit	Affirmed
Clifford and Nath'l Gammon	Murder, 2nd Degree	Jackson	Circuit	Affirmed
Nepty Guidy, et al.	Perjury	Santa Rosa	Circuit	Affirmed
John T. Harrell	Possessing Intoxicating Liquor	Washington	Circuit	Affirmed
Riley Herndon	Enticing Female, etc.	Dade	Circuit	Affirmed
Howard Hood	Destroying Personal Property	Walton	Circuit	Affirmed
Joe Jenkins	Murder, 2nd Degree	Hillsborough	Circuit	Affirmed
E. Johnson & M. Fowler	Murder, 2nd Degree	Indian River	Circuit	Affirmed
Casey Jones	Selling Liquor	Polk	Criminal	Affirmed
Forest Lake	Habeas Corpus	Seminole	Circuit	Remanded
Forest Lake	False Entries	Seminole	Circuit	Denied
E. H. Leavine	Perjury	Hillsborough	Criminal	Reversed
Oscar F. Lewis	Habeas Corpus	Calhoun	Circuit	Discharged
Bennie Maniscalco	Manslaughter	Hillsborough	Criminal	Affirmed
Frank Marley	Rape	Hillsborough	Circuit	Affirmed
Ramond Mathieu	Murder, 2nd Degree	Hillsborough	Circuit	Reversed
Harrison Padgett	Murder, 1st Degree	Taylor	Circuit	Dismissed
C. C. Price	Habeas Corpus	Leon	Circuit	Remanded
J. C. Pike	Murder, 1st Degree	Lake	Circuit	Affirmed
V. H. Reed	Carnal Intercourse	Duval	Criminal	Affirmed
O. Reed	Habeas Corpus	Pinellas	Circuit	Remanded
Wilber Rimes	Desertion	Union	Circuit	Reversed
Jim Scott	Murder, 1st Degree	Gulf	Circuit	Reversed
Jim O. Seago	Aggravated Assault	Madison	Circuit	Affirmed
Albert Sessions	Breaking and Entering	Orange	Criminal	Affirmed
Hosea Smith	Rape	Holmes	Circuit	Reversed
E. S. Smith	Habeas Corpus	Duval	Circuit	Rev. U.S.S.Ct.
Willie Smith	Murder, 1st Degree	Duval	Circuit	Reversed

CASES DISPOSED OF DURING JANUARY TERM, 1931—(Continued)

Name of Offender	Offense	County	Court	Disposition
W. W. Stripling	Habeas Corpus	Marion	Supreme	Remanded
Wm. H. Tindall .....	.....	Hillsborough ..	Criminal	Dismissed
Alfred Townsend	Murder, 2nd Degree	Lafayette	Circuit	Reversed
John Tucker	Larceny	Orange	Criminal	Affirmed
Frank Valentine	Violating Gambling Law	Dade	Criminal	Affirmed
Bertie Wiggins	Violating Liquor Law	Hendry	Circuit	Affirmed
Ertle Williamson	Manslaughter	Duval	Circuit	Affirmed
Roy L. Wilson	Habeas Corpus	Hamilton	Circuit	Dismissed
Norman Wynn	Habeas Corpus	Hillsborough ..	Circuit	Remanded
Luby Yeomans	Certiorari	Lee	Circuit	Quashed

CASES DISPOSED OF DURING JUNE TERM, 1931

Name of Offender	Offense	County	Court	Disposition
L. L. Avera	Manslaughter	Orange	Criminal	Dismissed
R. A. Blount	Carnal Intercourse	Duval	Criminal	Affirmed
Bunt Bishop	Stealing	Orange	Criminal	Affirmed
Neil Bolen	Perjury	Hillsborough ..	Criminal	Reversed
Charles T. Brooks	Robbery	Duval	Criminal	Affirmed
Ward Cannon	Breaking and Entering	Dade	Criminal	Reversed
Arthur L. Coulson .....	.....	Walton	Circuit	Dismissed
David Counts	Murder, 2nd Degree	Dade	Circuit	Affirmed

Charles Cox		Dade	Criminal	Dismissed
Angelo D'Allessandro	Habeas Corpus	Lee	Circuit	Affirmed
Henry Davis	Larceny	Jackson	Circuit	Affirmed
Ernest Everett et al.		Hillsborough ..	Criminal	Dismissed
H. H. Fleming	Manslaughter	Taylor	Circuit	Affirmed
J. H. Gaff	Manslaughter	Calhoun	Circuit	Affirmed
Louis Goldstein	Stealing	Palm Beach ...	Criminal	Reversed
March Graham	Manslaughter	Orange	Criminal	Affirmed
Melvin Hingson	Withholding Support	Suwannee	Circuit	Reversed
Edward R. Howell	Incest	Marion	Circuit	Affirmed
David Houck	Manslaughter	Taylor	Circuit	Affirmed
Ed Hurley	Withholding Support	Walton	Circuit	Affirmed
Elvin E. Jeffcoat	Murder, 1st Degree	Pinellas	Circuit	Affirmed
Herbert Jones	Breaking and Entering	Dade	Criminal	Affirmed
M. A. Latham	Assault	Dade	Criminal	Affirmed
J. W. Larramore	Murder, 1st Degree	Jackson	Circuit	Affirmed
W. S. McCoy		Hillsborough ..	Circuit	Dismissed
O. J. McDaniel	Embezzlement	Gulf	Circuit	Affirmed
W. L. McKinley	Embezzlement	Jackson	Circuit	Reversed
Robt. McQuagge	Murder, 1st Degree	Jackson	Circuit	Dismissed
Carl Metcalf	Habeas Corpus	Dade	Criminal	Remanded
James Milligan	Sub. of Perjury	Dade	Criminal	Reversed
Donald Moore	Carnal Intercourse	Lake	Circuit	Affirmed
John H. Padgett	False Pretense	Walton	Circuit	Affirmed
C. E. Parnell		Dade	Criminal	Dismissed
Leroy Perry	Murder, 1st Degree	Hillsborough ..	Circuit	Affirmed
A. C. Pickett		Hillsborough ..	Circuit	Dismissed
J. C. Pike	Murder, 1st Degree	Lake	Circuit	Affirmed

CASES DISPOSED OF DURING JUNE TERM, 1931—(Continued)

Name of Offender	Offense	County	Court	Disposition
Ed Pippin & C. C. Price	Robbery, Armed	Jackson	Circuit	Reversed
C. C. Price	Habeas Corpus	Leon	Circuit	Remanded
Grady Richter	Larceny	Washington ..	Circuit	Affirmed
Jack Ridgdill	Certiorari	Hendry	Circuit	Denied
Vander Shiber	Larceny	Calhoun	Circuit	Affirmed
Leon Stalnaker	Disbarment	Hillsborough ..	Circuit	Affirmed
J. B. Trawick	Murder, 1st Degree	Escambia	Circuit	Dismissed
Lee Underwood	Robbery	Duval	Criminal	Affirmed
Harry L. Waller	Habeas Corpus	Dade	Circuit	Dismissed
Roy White	Manslaughter	Seminole	Circuit	Affirmed
Chester Wilson	Assault to Rob	Marion	Circuit	Affirmed
Warren E. Wood	Murder, 2nd Degree	Taylor	Circuit	Affirmed
William Wright	Manslaughter	Duval	Criminal	Dismissed
Will T. Wolfe, et al.	Habeas Corpus	Santa Rosa	Circuit	Discharged

CASES DISPOSED OF DURING JANUARY TERM, 1932

Name of Offender	Offense	County	Court	Disposition
Willie Alls	Manslaughter	Dade	Circuit	Reversed
Yzauro Bentley .....	.....	Hillsborough ..	Criminal	Dismissed
J. H. Brock	Embezzlement	Suwannee	Circuit	Affirmed
Nathaniel Brunson	Receiving Stolen Goods	Duval	Criminal	Affirmed

L. B. Bryant	Arson	Lee	Circuit	Remanded
L. B. Bryant	Habeas Corpus	Lee	Circuit	Dismissed
J. W. Buchanan	Habeas Corpus	Union	U. S. Circuit	Denied
J. W. Buchanan	Habeas Corpus	Union	Circuit	Remanded
William Cator	Stealing	Sarasota	Circuit	Affirmed
Avery Coleman .....	.....	Duval	Circuit	Dismissed
Ernest Coleman	Rape	Broward	Circuit	Affirmed
Saferino Fabal et al.	Highway Robbery	Monroe	Criminal	Reversed
O. F. Finney	Manslaughter	Collier	Circuit	Affirmed
Louise Garrison	Habeas Corpus	Dade	Circuit	Affirmed
George Grimsley	Receiving Stolen Goods	Okaloosa	Circuit	Reversed
Jeff Hodges	Larceny	Union	Circuit	Affirmed
Edward R. Howell	Incest	Marion	Circuit	Remanded
Raymond Jarago	Habeas Corpus	Dade	Circuit	Affirmed
Casey Jones	Violation Liquor Law	Polk	Criminal	Remanded
Juanita Lewis	Murder, 2nd Degree	Duval	Circuit	Affirmed
Sam Livingston	Murder	Dade	Circuit	Dismissed
Donald Long	Larceny	Orange	Criminal	Affirmed
Howard Lovins	Manslaughter	Escambia	Circuit	Affirmed
Jack McCloud	Habeas Corpus	Lake	Circuit	Reversed
A. L. McElevane	Murder, 2nd Degree	Columbia	Circuit	Affirmed
John H. McKinley	Manslaughter	Duval	Criminal	Affirmed
Odie McNeill	Robbery, Armed	Dade	Criminal	Reversed
William H. Marshall	Embezzlement	Bay	Circuit	Affirmed
Carl Metcalf	Habeas Corpus	Dade	Criminal	Remanded
Robert E. Moore	Grand Larceny	Pinellas	Circuit	Affirmed
F. L. Munson	Embezzlement	Palm Beach	Criminal	Dismissed
Ellen Newborn	Arson	Escambia	Court Record	Dismissed

CASES DISPOSED OF DURING JANUARY TERM, 1932—(Continued)

Name of Offender	Offense	County	Court	Disposition
Mack Newsome	Assault to Rape	Jackson	Circuit	Affirmed
Lamar Odum .....	.....	Polk	Circuit	Dismissed
Lamar Odum	Habeas Corpus	Polk	Circuit	Denied
T. J. Parrish	Selling Liquor	Orange	Criminal	Affirmed
Herman Poston	Withholding Support	Walton	Circuit	Affirmed
Sam Ragsdale	Larceny	Orange	Criminal	Affirmed
John Reffkin	Habeas Corpus	St. Johns	Circuit	Affirmed
John Reffkin	Petition Re-Hearing	St. Johns	Circuit	Denied
Lee Rhodes	Murder, 1st Degree	Seminole	Circuit	Reversed
Tyree C. Whitehurst	Practicing Medicine without License	Hillsborough ..	Criminal	Reversed
Edward Tyson	Habeas Corpus	Leon	Circuit	Remanded
Bert A. Shaw	Carnal Intercourse	Duval	Criminal	Affirmed
J. H. Skaley	Habeas Corpus	Hillsborough ..	Circuit	Dismissed
C. K. Slayton	Murder, 2nd Degree	Dade	Circuit	Reversed
Louie Stuckey .....	.....	Flagler	Circuit	Dismissed
Clayton Thomas	Carnal Intercourse	Duval	Criminal	Affirmed
F. B. Warwick	Robbery, Armed	Dade	Criminal	Reversed
Lewis E. Weinberg	Assault to Rob	Hillsborough ..	Criminal	Affirmed
W. L. White	Embezzlement	Duval	Criminal	Dismissed
Will Wooten	Habeas Corpus	Suwannee	Circuit	Affirmed

CASES DISPOSED OF DURING JUNE TERM, 1932

Name of Offender	Offense	County	Court	Disposition
Joe Adams	Not Shown	Polk	Criminal	Dismissed
Robert Anderson	Aggravated Assault	Baker	Circuit	Dismissed
Fred Andrews	Grand Larceny	Duval	Criminal	Reversed
Mrs. Mae Atkinson	Violation Liquor Law	Walton	Criminal	Reversed
F. K. Armstrong	Manslaughter	Lee	Circuit	Reversed
Elijah Baker	Murder, 2nd Degree	Dade	Circuit	Affirmed
Mamie Barron	Aggravated Assault	Bradford	Circuit	Dismissed
C. L. Behrens	Robbery, Armed	Sarasota	Circuit	Affirmed
Edd Black	Manslaughter	Dixie	Circuit	Affirmed
Benj. A. Blameuser	Crime Against Nature	Dade	Criminal	Reversed
Wm. O. Bozeman	Manslaughter	Duval	Criminal	Reversed
J. O. Bradshaw	Violation Liquor Law	Walton	Circuit	Reversed
Willie Brown	Receiving and Aiding Concealment Stolen Property	Lake	Circuit	Affirmed
Willie Burgess	Not Shown	Bay	Circuit	Dismissed
D. C. Butler	Habeas Corpus	Duval	Circuit	Affirmed
Josephine Carnagio & Minnie Carnagio	Lottery	Dade	Criminal	Affirmed
Joseph Carnagio	Lottery and Gambling	Dade	Criminal	Reversed
John A. Celays, et al.	Not Shown	Pinellas	Circuit	Dismissed
Forrest Lake	Habeas Corpus	Union	Circuit	Reversed
Carl Shestnut	Murder, 2nd Degree	Polk	Criminal	Affirmed
J. Labon Childre	Assault to Rape	Dade	Criminal	Reversed
Bubber Clark	Aggravated Assault	Bradford	Circuit	Dismissed
Mannie Cook	Manslaughter	Highlands	Circuit	Dismissed

CASES DISPOSED OF DURING JUNE TERM, 1932—(Continued)

Name of Offender	Offense	County	Court	Disposition
Willie Cooper	Violation Liquor Law	Walton	Circuit	Reversed
Mrs. Lillie Mae Coulson	Violation Liquor Law	Walton	Circuit	Reversed
J. L. Croft	Embezzlement	Putnam	Circuit	Reversed
Louis Currington	Not Shown	Walton	Circuit	Dismissed
J. B. Dickinson	Habeas Corpus	Duval	Criminal	Discharged
Tatum Duke	Manslaughter	Walton	Circuit	Reversed
Joe Evans	Receiving and Aiding Concealment Stolen Property	Lake	Circuit	Reversed
M. J. Fillingim	Robbery	Jackson	Circuit	Dismissed
John Flowers	Grand Larceny	Duval	Criminal	Reversed
Harry Gillard	Robbery	Duval	Criminal	Dismissed
Frank Gonzalez	Habeas Corpus	Dade	Circuit	Affirmed
Henry Grace	Murder, 2nd Degree	Pinellas	Circuit	Affirmed
Chas. Gregory & Puege Nelson	Robbery, Armed	Dade	Criminal	Affirmed
Frank Gonzales, alias Cheeko	Prostitution of Female	Dade	Criminal	Reversed
Earl Hanshaw & Leland Johnson	Stealing	Charlotte	Circuit	Affirmed
Joe Haworth	Habeas Corpus	Union	Circuit	Remanded
Arthur Hicks	Murder, 1st Degree	Alachua	Circuit	Dismissed
Bill Hogan	Not Shown	Walton	Circuit	Dismissed
Willie Jackson	Not Shown	Palm Beach	Criminal	Dismissed
E. E. Jeffcourt	Habeas Corpus	Union	Circuit	Remanded
John Jordan	Breaking and Entering	Palm Beach	Criminal	Affirmed
Henry Jordan	Not Shown	Palm Beach	Criminal	Dismissed
Luther Keen	Not Shown	Columbia	Circuit	Dismissed

Barnard Kilgore	Habeas Corpus	Pinellas	Circuit	Remanded
Gale Lassiter	Violation Liquor Law	Walton	Circuit	Reversed
Mrs. Gale Lassiter	Violation Liquor Law	Walton	Circuit	Reversed
R. R. Lassiter	Not Shown	Escambia	Court Record	Dismissed
Cicero Lewis	Robbery, Armed	Dade	Criminal	Affirmed
Joe Lopez	Breaking and Entering	Polk	Criminal	Reversed
John McGuire	Robbery, Armed	Volusia	Criminal	Affirmed
Arch McLeod & J. J. Hughes	Habeas Corpus	Polk	Circuit	Discharged
Mrs. Henry Martin	Violation Liquor Law	Walton	Circuit	Reversed
W. E. Martin	Habeas Corpus	Orange	Circuit	Remanded
C. Thos. Masters	Not Shown	Hillsborough	Criminal	Dismissed
George Nails	Manslaughter	Jefferson	Circuit	Affirmed
Fred Nowling	Violation Liquor Law	Walton	Circuit	Reversed
Brack Oates	Not Shown	Walton	Circuit	Dismissed
Willie Owens	Not Shown	Walton	Circuit	Dismissed
H. C. Packard	Habeas Corpus	Duval	Circuit	Remanded
Victor Palmer	Murder, 1st Degree	Hillsborough	Circuit	Affirmed
Geo. Peacock	Not Shown	Dixie	Circuit	Dismissed
Chas. Pelaez	Buying & Concealing Stolen Property	Hillsborough	Criminal	Reversed
M. J. Pickett	Assault to Murder	Duval	Criminal	Dismissed
M. J. Pickett	Breaking and Entering	Duval	Criminal	Dismissed
Herman Poston	Habeas Corpus	Walton	Circuit	Remanded
Albert Roundtree, et al.	Not Shown	Sarasota	Circuit	Dismissed
Alfred Sawyer	Habeas Corpus	Dade	Circuit	Reversed
Jim Scott	Murder, 2nd Degree	Gulf	Circuit	Affirmed
Jim Scott	Murder, 2nd Degree	Gulf	Circuit	Denied
Daisy Shepard	Manslaughter	Hillsborough	Criminal	Affirmed
E. R. Skiff	Carnal Intercourse	Hillsborough	Criminal	Reversed

CASES DISPOSED OF DURING JUNE TERM, 1932—(Continued)

Name of Offender	Offense	County	Court	Disposition
Mrs. Cleo Sleigh	Violation Liquor Law	Walton	Circuit	Reversed
Dennis Smith	Murder, 2nd Degree	Union	Circuit	Affirmed
James Stevens	Breaking and Entering	Brevard	Circuit	Dismissed
Call Stewart	Murder, 1st Degree	Lafayette	Circuit	Affirmed
Clifford Stewart	Robbery, Armed	Dade	Criminal	Reversed
Jesse Tuberville	Grand Larceny	Sarasota	Circuit	Affirmed
Will Warren	Murder, 2nd Degree	Duval	Circuit	Dismissed
R. P. Watson	Robbery	Duval	Criminal	Dismissed
Jesse Weeks	Habeas Corpus	Duval	Circuit	Dismissed
Isidore White	Robbery, Armed	Volusia	Criminal	Affirmed
Horace Williams	Concealing Stolen Property	Hillsborough	Criminal	Affirmed
Fred Williams	Not Known	Walton	Circuit	Dismissed
James Williams	Receiving Stolen Goods	Duval	Criminal	Reversed

XIV

REPORT OF STATE ATTORNEYS AND COUNTY SOLICITORS

STATE ATTORNEYS

REPORT OF STATE ATTORNEY

Covering Escambia County, First Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	5	1	2
Second Degree	2	....	....
Rape .....	....	3	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	4	4

Respectfully submitted,

PURL G. ADAMS,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Santa Rosa County, First Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	4	5	1
Manslaughter	1	3	....
Rape .....	....	2	....
Assaults:			
With intent to Commit Felony	7	4	....
Other Assaults	5	10	....
Arson and Kindred Offenses	2	....	1
Burglary and Kindred Offenses	9	4	1
Larceny:			
Kindred Offenses	8	7	1
Of Cattle	2	1	....
Embezzlement	1	2	....
False Pretenses and Kindred Offenses	3	1	1

Forgery, Counterfeiting and Kindred Offenses	4	....	1
Trespasses, Injuring Buildings, etc.	3	2	1
Reckless Driving of Auto	1	2	....
Bribery	1	....	1
Resisting Arrest, etc.	1	1	....
Braining Mule .....	....	1	....
Adultery, Fornication, etc.	1	....	....
Incest	1	....	....
Bigamy	1	....	....
Crime Against Nature	2	....	....
Violation Liquor Law, First Offense	1	2	....
Desertion and Withholding Support from Wife and Children	11	8	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Hit and Run Driver	1	....	....
Burning Woods Unlawfully	3	....	3
Discharging Fire Arms	1	....	....
Obstructing Public Roads	1	....	....
Practicing Madicine Without License..	1	....	....
Worthless Check	2	3	....
Operating Business Without License ..	4	....	....
Paising Animals	2	....	....
Killing Doe Deer	1	....	....
Selling Mortgaged Property .....	....	5	....
Defacing Jail .....	....	2	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	1
Criminal Hearings Attended	2	2

Respectfully submitted,

PURL G. ADAMS,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Okaloosa County, First Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
Manslaughter	1	....	....
Rape	1	....	....
Robbery:			
Unarmed	1	....	1

Assaults:

With Intent to Commit Felony	7	5	----
Other Assaults	5	5	1
Libel and Defamation	----	1	----
Arson and Kindred Offenses	2	1	3
Burglary and Kindred Offenses	6	3	1

Larceny:

Of Cattle	5	1	2
Kindred Offenses	3	5	----
Embezzlement:	1	1	----
False Pretenses and Kindred Offenses	6	2	----
Forgery, Counterfeiting and Kindred Offenses	4	1	----
Trespasses, Injuring Buildings, etc.	2	----	----
Perjury	----	1	----
Resisting Arrest, etc.	1	----	----
Adultery, Fornication, etc.	4	2	3
Bigamy	----	1	----
Violation Liquor Law, First Offense	3	1	----
Desertion and Withholding Support from Wife and Children	7	4	----

Miscellaneous Crimes Not Otherwise

Enumerated:

Selling Mortgaged Property	2	2	----
Defacing Jail	3	----	----
Worthless Check	3	----	----
Operating Gaming Device	1	----	----
Operating Business Without License ..	36	1	----
Publishing Obscene Prints	----	1	----
Concealed Weapons	----	1	----
Operating Barber Shop on Sunday	----	1	----
Malicious Mischief	----	1	----

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	5	5
Bond Validation Proceedings	1	1

Respectfully submitted,

PURL G. ADAMS,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Walton County, First Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	3	---
Manslaughter	1	---	---
Robbery:			
Armed	---	1	---
Unarmed	1	1	---
Assaults:			
With Intent to Commit Felony	12	10	2
Other Assaults	6	8	---
Arson and Kindred Offenses	---	2	---
Burglary and Kindred Offenses	13	8	2
Larceny:			
Of Automobiles	3	---	1
Of Cattle	8	2	---
Kindred Offenses	12	9	1
False Pretenses and Kindred Offenses	2	1	---
Forgery, Counterfeiting and Kindred Offenses	3	2	---
Trespasses, Injuring Buildings, etc.	1	4	---
Perjury	2	1	---
Adultery, Fornication, etc.	1	6	---
Violation Liquor Law, Second Offense	9	5	2
Desertion and Withholding Support from Wife and Children	7	8	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Operating a Gambling House	1	---	---
Violation of Liquor Laws, First Offense	24	3	---
Hitting and Running	---	2	---
Maiming Cattle	1	1	1
Malicious Mischief	2	5	---
Selling Mortgaged Property	5	3	1
Worthless Check	1	---	---
Offering Teachers Exam. for Sale	3	---	---
Operating Disorderly House and Conduct	3	1	---
Voluntary Escape	1	1	---
Concealed Weapon	1	1	---
Changing Mark on Hog	1	---	---

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	16	16
Bond Estreature Proceedings	6	---
Criminal Hearings Attended	3	---
Habeas Corpus Hearings Attended	1	---

Respectfully submitted,

PURL G. ADAMS,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Wakulla County, Second Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	4	3	2
Rape	2	2	---
Robbery:			
Armed	2	---	---
Assaults:			
With Intent to Commit Felony	14	8	---
Burglary and Kindred Offenses	10	5	---
Bigamy	3	---	---
Desertion and Withholding Support from Wife and Children	4	---	---
Miscellaneous Crimes Not Otherwise Enumerated:			
False Personation of Officer	1	---	---
Disposing of Property Under Lien.....	3	---	1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	1

Respectfully submitted,

O. C. PARKER, JR.
State Attorney.

REPORT OF STATE ATTORNEY

Covering Leon County, Second Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	12	3	1
Manslaughter	1	2	---
Rape	1	---	---

Assaults:			
With Intent to Commit Felony	8	12	1
Other Assaults	1	3	---
Burglary and Kindred Offenses	36	11	5
Larceny:			
Of Automobiles	11	3	---
Of Cattle	3	2	1
Kindred Offenses	1	1	---
Embezzlement:	1	---	---
False Pretenses and Kindred Offenses	2	---	---
Forgery, Counterfeiting and Kindred Offenses	16	2	---
Desertion and Withholding Support from Wife and Children	3	2	---
Miscellaneous Crimes Not Otherwise Enumerated:			
Disposing Property Under Lien	6	1	---
Culpable Negligence	2	---	---
Opposing Officer Disposing Duties	1	---	---
Trespass to Land and Timber	1	1	1
Reckless Driving	1	---	---
Practicing Medicine Without License..	---	1	---
Removing Car Under Lien	---	4	---
Conspiracy	---	1	---

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	9	5
Bond Estreature Proceedings	2	2
Other Cases Not Enumerated Handled by State Attorney	4	---

Respectfully submitted,

O. C. PARKER, JR.,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Liberty County, Second Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	---	---
Second Degree	3	---	---
Assaults:			
With Intent to Commit Felony	4	2	---
Arson and Kindred Offenses	1	---	---
Burglary and Kindred Offenses	4	---	---

Larceny:

Of Automobiles	2	2	
Of Cattle	1		
Kindred Offenses	1		

Embezzlement:

Public Officers	2		
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Desertion and Withholding Support

from Wife and Children	1		
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Miscellaneous Crimes Not Otherwise

Enumerated:

Unlawfully Injuring Public Building..	1		
Malpractice in Office	2	....	....

Respectfully submitted,

O. C. PARKER, JR.,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Franklin County, Second Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Assaults:			
With Intent to Commit Felony	7	2	1
Burglary and Kindred Offenses	4	....	....
Larceny:			
Of Cattle	3	....	....
Forgery, Counterfeiting and Kindred Offenses	1	....	....
Desertion and Withholding Support from Wife and Children	2	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Receiving Stolen Property	1	1	....
Removing Property Beyond Limits of County .....	....	1	....
Operating Motor Vehicle Transporting Passengers for Hire Without License .....	....	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	....

Respectfully submitted,

O. C. PARKER, JR.,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Gadsden County, Second Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	5	3	----
Second Degree	1	----	----
Manslaughter	1	1	----
Rape	2	2	1
Assaults:			
With Intent to Commit Felony	6	----	----
Arson and Kindred Offenses	1	----	----
Burglary and Kindred Offenses	31	7	5
Larceny:			
Of Automobiles	2	3	1
Of Cattle	3	----	----
Kindred Offenses	3	----	----
Embezzlement	----	2	----
False Pretenses and Kindred Offenses	1	----	----
Forgery, Counterfeiting and Kindred Offenses	7	1	----
Desertion and Withholding Support from Wife and Children	10	4	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Kidnapping	1	1	----
Resisting an Officer	3	----	----
Receiving and Concealing Stolen Property	3	4	1
Shooting Into Dwelling	1	----	----
Changing Marks on Hogs	----	1	----

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	1
Other Cases Not Enumerated		
Handled by State Attorney	3	----

Respectfully submitted,

O. C. PARKER, JR.,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Jefferson County, Second Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	6	....	....
Manslaughter	3	....	....
Assaults:			
With Intent to Commit Felony	10	....	2
Arson and Kindred Offenses	2	....	1
Burglary and Kindred Offenses	21	....	....
Larceny:			
Of Automobiles	4	....	....
Of Cattle	3	....	....
Kindred Offenses	2	....	....
Forgery, Counterfeiting and Kindred Offenses	3	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
2nd. Offense Pos. of Liquor	1	....	....
Shooting Into Dwelling	1	....	....
Receiving Stolen Property	1	....	....
Abominable and Detestable Crime Against Nature	1	....	....

17 no true bills were found during this period, but the minutes do not show the nature of these offenses and the papers do not appear to be in the clerk's files for inspection.

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	1	....
Habeas Corpus Hearings Attended	1	....
Respectfully submitted,		

O. C. PARKER, JR.,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Taylor County, Third Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	6	....	1
Manslaughter	1	....	....
Rape	11	....	1

Robbery:

Armed	4	....	I
False Imprisonment and Kidnapping	1	....	....

Assaults:

With Intent to Commit Felony	7	....	2
Other Assaults	1	....	....
Sending Threatening Communications	1	....	....
Arson and Kindred Offenses	5	....	2
Burglary and Kindred Offenses	12	....	2

Larceny:

Of Automobiles	2	....	....
Of Cattle	22	....	8
Kindred Offenses	7	....	3
False Pretenses and Kindred Offenses.....	1	....	....
Forgery, Counterfeiting and Kindred Offenses	4	....	....
Trespasses, Injuring Buildings, etc.	1	....	2
Violation Liquor Law, Second Offense	4	....	....
Desertion and Withholding Support from Wife and Children	10	....	....

Miscellaneous Crimes Not Otherwise

Enumerated:

Driving Auto Intoxicated	1	....	....
Indecent Exposure of Person	1	....	....
Shooting Into Auto	1	....	....
Seines and Stop Nets	1	....	....
Being Drunk	10	....	....
Mullet During Closed Season	2	....	....
Removing Property Sub. to Lien	4	....	I
Having Diving App. & Helmets	16	....	....
Selling Prop. Sub. to Lien	4	....	....
Shooting Into Dwelling House	2	....	....
Lewd and Lascivious Ass'n.	2	....	2
House of Ill Fame	8	....	....
Carrying Concealed Weapons	4	....	2

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Habeas Corpus Hearings Attended	I	....
17 Cases on Docket, Spring Term, 1931.		

Respectfully submitted,

J. R. KELLEY,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Suwannee County, Third Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	10	....	....
Robbery:			
Armed	2	....	....
False Imprisonment and Kidnapping	1	....	....
Assaults:			
With Intent to Commit Felony	10	....	2
Other Assaults	4	....	1
Arson and Kindred Offenses	1	....	....
Burglary and Kindred Offenses	30	....	5
Larceny:			
Of Automobiles	9	....	1
Of Cattle	4	....	....
Kindred Offenses	3	....	....
Embezzlement	1	....	....
False Pretenses and Kindred Offenses	1	....	....
Forgery, Counterfeiting and Kindred Offenses	7	....	2
Conspiracy	2	....	1
Adultery, Fornication, etc.	1	....	....
Incest	1	....	....
Bigamy	1	....	....
Violation Liquor Law, Second Offense	2	....	....
Desertion and Withholding Support from Wife and Children	14	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Disposing Mortgaged Property	6	....	4
Shooting Into Automobile	2	....	....
Removing Personal Property	1	....	1
Cutting and Tearing Down Fence	1	....	....
An Affray	1	....	1
Shooting Into Dwelling House	1	....	....
Maiming a Cow	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	3	....
Habeas Corpus Hearings Attended	5	....
16 Cases on Docket, Spring Term, 1931.		

Respectfully submitted,

J. R. KELLEY,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Hamilton County, Third Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	10	....	1
Manslaughter	1	....	1
Robbery:			
Armed	1	....	....
Assaults:			
With Intent to Commit Felony	11	....	....
Other Assaults	1	....	....
Burglary and Kindred Offenses	24	....	2
Larceny:			
Of Automobiles	3	....	....
Of Cattle	2	....	1
Kindred Offenses	7	....	3
Embezzlement:			
Public Officers	2	....	....
Other Kinds	1	....	1
False Pretenses and Kindred Offenses	3	....	....
Trespasses, Injuring Buildings, etc.	1	....	1
Desertion and Withholding Support from Wife and Children	6	....	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Maiming Animal	1	....	....
Selling and Disposing Personal Property	1	....	....
Cutting Fence, Another's	1	....	....
Lewd and Lascivious	1	....	1
Receiving and Aiding Stolen Prop.....	1	....	....
Shooting Into An Auto	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	17	....
Bond Estreature Proceedings	5	....
Criminal Hearings Attended	11	....
Habeas Corpus Hearings Attended	8	....

15 Cases on Docket, Spring Term, 1931.

Respectfully submitted,

J. R. KELLEY,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Lafayette County, Third Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	3	---	---
Assaults:			
With Intent to Commit Felony	3	---	---
Burglary and Kindred Offenses	6	---	1
Larceny:			
Of Cattle	1	---	---
Kindred Offenses	4	---	2
Trespasses, Injuring Buildings, etc.	1	---	---
Perjury	1	---	---
Bigamy	2	---	---
Desertion and Withholding Support from Wife and Children	5	---	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Being Drunk	2	---	---
Maiming a Cow	1	---	---
Changing Mark on Hog	1	---	---
Accessories After the Fact Murder.....	---	---	2
Lewd and Lascivious Asso.	---	---	1
Misapplication, Embezzlement and Ex- cessive Loans, Bank Officer	---	---	1
Selling Property, Subject to Lien	---	---	1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	5	---
Bond Estreature Proceedings	11	---
Criminal Hearings Attended	5	---
Habeas Corpus Hearings Attended	1	---
26 Cases on Docket, Spring Term, 1931.		

Respectfully submitted,

J. R. KELLEY,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Dixie County, Third Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned By Grand Jury	Verdicts of Not Guilty
Homicide:		
First Degree	4	1
Rape	1	---
Arson	2	---
Assaults:		
With Intent to Commit Felony	5	1
Larceny:		
Of Automobiles	3	1
Of Cattle	4	---
Kindred Offenses	3	---
Burglary and Kindred Offenses	11	1
False Pretenses	1	1
Forgery, Counterfeiting, etc.	4	---
Resisting Arrest	1	---
Withholding Means of Support		
from Wife and Children	6	---
Inciting to Commit Perjury	1	1
Lewd & Lascivious Ass'n.	3	2
Intoxicating Liquors	1	---
Cutting Fence of Another	1	---

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeal Cases from Lower Court	10	---
Habeas Corpus		
14 Cases on Docket, Spring Term, 1931.		

Respectfully submitted,

J. R. KELLEY,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Madison County, Third Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned By Grand Jury	Verdicts of Not Guilty
Homicide:		
First Degree	10	3
Manslaughter	3	1
Rape	1	1
Robbery:		
Armed	3	---

Assaults:		
With Intent to Commit Felony	12	2
Other Assaults	4	---
Burglary and Kindred Offenses	34	1
Larceny:		
Of Cattle	3	2
Kindred Offenses	3	1
Embezzlement	1	1
False Pretenses and Kindred Offenses	4	---
Trespasses, Injuring Buildings, etc.	2	2
Resisting Arrest, etc.	1	---
Conspiracy	1	---
Incest	1	---
Desertion and Withholding Support from Wife and Children	2	4
Miscellaneous Crimes Not Otherwise Enumerated:		
Cruelty to Child	1	---
Shooting into Automobile	1	---
Malicious Mischief	1	---
Disposing of Property Sub. to Lien	4	4
Lewd and Lascivious Ass'n.	2	2
Engaging in Business Without License	4	---
Running House of Ill Fame	1	---
Intoxicating Liquors	1	---

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	5	---
Habeas Corpus Hearings Attended	3	---
14 Cases on the Docket, Spring Term 1931.		

Respectfully submitted,

J. R. KELLEY,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Columbia County, Third Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned By Grand Jury	Verdicts of Not Guilty
Homicide:		
First Degree	11	1
Second Degree	3	---
Manslaughter	2	1
Rape	1	3

Robbery:

Armed	2	---
-------------	---	-----

Assaults:

With Intent to Commit Felony	25	7
Other Assaults	8	---
Libel and Defamation	---	1
Arson and Kindred Offenses	1	---
Burglary and Kindred Offenses	34	9

Larceny:

Of Automobiles	6	3
Of Cattle	5	---
Kindred Offenses	16	1
Embezzlement	1	---
Forgery, Counterfeiting and Kindred Offenses	15	1
Trespasses, Injuring Buildings, etc.	4	---
Violation Liquor Law, Second Offense	2	---
Desertion and Withholding Support from Wife and Children	15	---

Miscellaneous Crimes Not Otherwise Enumerated:

Shooting into Dwelling House	2	---
Selling Personal Property, Subject to Lien	4	3
Improper Ex. Dangerous Weapon	1	---
Having and Running House of Ill Fame	1	---
Having Slot Machines	12	---
Changing Mark of Hog	4	---
Receiving Stolen Property	2	---
Threatening Communications	1	---
Operating Auto While Under Influence of Intoxicating Liquor	1	---
Injuring Public Building	1	---
Driving Overloaded Truck on Highway	3	---

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	10	---
Bond Estreuture Proceedings	16	---
Habeas Corpus Hearings Attended	5	---
18 Cases on the Docket at the Beginning of the Spring Term, 1931.		

Respectfully submitted,

J. R. KELLEY,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Clay County, Fourth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned By Grand Jury	Verdicts of Not Guilty
Homicide:		
First Degree	2	1
Second Degree	1	---
Assaults:		
With Intent to Commit Felony	3	---
Other Assaults	1	1
Burglary and Kindred Offenses	7	3
Larceny:		
Of Cattle	2	1
Desertion and Withholding Support from Wife and Children	3	---
Miscellaneous Crimes Not Otherwise Enumerated:		
Unlawful Carnal Intercourse	2	1
Discharging Firearms	1	1
Impersonating Officers	1	1
Shooting into Dwelling	1	1
Receiving Stolen Property	1	---
Keeping Gambling House	1	---

Respectfully submitted,

CHARLES M. DURRANCE,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Duval County, Fourth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned By Grand Jury	Verdicts of Not Guilty
Homicide:		
First Degree	68	10
Second Degree	22	13
Manslaughter	2	---
Rape	7	2
False Imprisonment and Kidnapping	21	---
Burglary and Kindred Offenses	5	---
Embezzlement:		
Public Officers	42	14
Conspiracy	78	---
Desertion and Withholding Support from Wife and Children	2	---

Miscellaneous Crimes Not Otherwise Enumerated:

Defrauding Another of a Thing of Value	70	....
Malpractice	19	....
Usury	891	....
Refusing Investigation	12	....
Grand Larceny	5	....
Assault to Commit Murder, First Degree	23	....
Aggravated Assault	21	....

Respectfully submitted,

CHARLES M. DURRANCE,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Nassau County, Fourth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned By Grand Jury	Verdicts of Not Guilty
Homicide:		
First Degree	2	1
Manslaughter	2	2
Rape	1	....
Assaults:		
With Intent to Commit Felony	3	....
Burglary and Kindred Offenses	9	....
Larceny:		
Kindred Offenses	4	2
Embezzlement:		
Public Officers	1	....
Other Kinds	1	....
Crime Against Nature	1	....
Desertion and Withholding Support from Wife and Children	1	....
Miscellaneous Crimes Not Otherwise Enumerated:		
Taking Shrimp from Inside Waters	1	....
Aiding Prisoners to Escape	1	....
Receiving Stolen Goods	3	1
Concealing Death of Bastard	1	....
Kidnapping	1	....
Setting Fire to Woods	2	2
Operating Auto While Intoxicated	1	....
Cow Stealing	2	....

Respectfully submitted,

CHARLES M. DURRANCE,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Marion County, Fifth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	7	1	....
Second Degree	1	0	1
Manslaughter	1	2	0
Rape	3	0	....
Robbery:			
Armed	2	1	....
Unarmed	1	....	....
Assaults:			
With Intent to Commit Felony	14	0	1
Other Assaults .....	....	3	....
Burglary and Kindred Offenses	53	8	4
Larceny:			
Of Automobiles	4	....	....
Of Cattle	3	1	....
Kindred Offenses	4	1	....
Embezzlement	2	....	....
False Pretenses and Kindred Offenses.....	1	1	....
Forgery, Counterfeiting and Kindred Offenses	16	4	....
Trespasses, Injuring Buildings, etc.	4	1	....
Perjury .....	....	1	....
Conspiracy	1	....	....
Incest .....	....	1	....
Crime Against Nature	1	1	....
Desertion and Withholding Support from Wife and Children	7	....	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Fraudulent Marking Unmarked Hog	2	....	1
Carnal Intercourse Girl Under 18 Yrs. ....	....	3	....
Hit and Run Drivers	3	....	....
Unlawful Killing Animal of Another..	1	2	....
Culpable Negligence	3	....	....
Keeping Gambling House	1	....	....
Driving Drunk and Injuring Prop.	1	....	....
Disposing of Property Under Lien ....	....	2	....
Possession Burglarious Tools	1	....	....
Other Miscellaneous Crimes	4	3	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court.....	7; 2 dismissed; 5	deft discharged
Bond Validation Proceedings	1	Validated
Bond Estreature Proceedings	1	Execution Issued
Criminal Hearings Attended	56	
Habeas Corpus Hearings Attended	7	Released
Three Terms Court Outside Circuit, Liberty, Leon and Lafayette Counties, 1932.		

Respectfully submitted,

A. P. BUIE,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Pinellas County, Sixth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned By Grand Jury	Verdicts of Not Guilty
Homicide:		
First Degree	7	1
Second Degree	1	---
Manslaughter	1	---
Mayhem	1	---
Rape	1	---
Robbery:		
Armed	9	2
False Imprisonment and Kidnapping	One Case Pending Mistrial	
Assaults:		
With Intent to Commit Felony	17	1
Arson and Kindred Offenses	1	---
Burglary, Breaking and Entering and Kindred Offenses	46	2
Larceny:		
Of Automobiles	7	---
Kindred Offenses: Receiving Stolen Property, etc.	9	2
Embezzlement: (Eight pending)	11	---
False Pretenses and Kindred Offenses	5	---
Forgery, Counterfeiting and Kindred Offenses	13	1
Perjury	4 Pending	---
Resisting Arrest, etc.	5	1
Violation Liquor Law, Second Offense	3	1
Desertion and Withholding Support from Wife and Children (All Settled by Court).....	11	---

Miscellaneous Crimes Not Otherwise Enumerated:

1 Extortion .....	.....	1
Possession of Lottery Tickets .....	.....	1
Compounding a Felony—Carnal Intercourse With Female Under 18—3 Cases Against same De- fendant. Convicted on One Case; Other 2 Pending		
Have Had 5 Extra Sessions of Grand Jury in Pinellas County to Keep Jail Costs Down.		

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	2 Affirmed; 2 Pending
Criminal Hearings Attended	32	
Habeas Corpus Hearings Attended....	5	3 Dismissed; 2 pending
One Quo Warranto Proceeding. Grand Jury Has Returned a Total of 36. No True Bills.		

Respectfully submitted,

CHESTER B. McMULLEN,
State Attorney Sixth Judicial Circuit.

REPORT OF STATE ATTORNEY

Covering Pasco County, Sixth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned By Grand Jury	Verdicts of Not Guilty
Robbery:		
Armed	2	....
Assaults:		
With Intent to Commit Felony	3	1
Other Assaults	1	....
Larceny:		
Of Automobiles	4	....
Kindred Offenses	6	....
False Pretenses and Kindred Offenses	1	....
Forgery, Counterfeiting and Kindred Offenses	4	....
Perjury	1	....
Resisting Arrest, etc.	1	....
Desertion and Withholding Support from Wife and Children	4	2
Miscellaneous Crimes Not Otherwise Enumerated:		
Fraudently Altering Mark	1	....
Maliciously Maiming Animal of Another	1	....

Maliciously Administering Poison to Animal of Another	1	1
Accessory Before the Fact	1	....
Receiving Stolen Property	2	....
Breaking and Entering	10	....
Conveying Tools Into Jail to Aid Escape	1	....
Entering Grove With Intent to Commit Larceny....	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	2	....

Respectfully submitted,

CHESTER B. McMULLEN,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Volusia County, Seventh Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	6	4	....
Second Degree	6	1	....
Manslaughter	1	....	....
Rape	1	4	....
Assaults:			
With Intent to Commit Felony	1	....	....
Adultery, Fornication, etc.	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	30 17	Dismissed; 3 Nollod; 2 Affirmed 4 Reversed; 4 Continued
Bond Validation Proceedings	24 22	Confirmed; 1 App.; 1 Dismissed
Bond Estreature Proceedings.....	3	Judgments Obtained
Criminal Hearings Attended	20	
Habeas Corpus Hearings Attended	10	

Respectfully submitted,

MURRAY SAMS,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Alachua County, Eighth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	21	1	2
Second Degree	3	---	---
Manslaughter	2	3	---
Rape	---	3	---
Robbery:			
Armed	4	1	---
Unarmed	1	---	---
Assaults:			
With intent to Commit Felony.....	25	6	3
Other Assaults	2	---	---
Arson and Kindred Offenses	---	1	---
Burglary and Kindred Offenses	42	7	5
Larceny:			
Of Automobiles	28	6	1
Of Cattle	1	---	---
Kindred Offenses	7	4	---
Embezzlement:			
Public Institutions	6	---	---
Other Kinds	2	1	---
False Pretenses and Kindred Offenses	2	---	---
Forgery, Counterfeiting and Kindred Offenses	17	1	---
Trespasses, Injuring Buildings, etc.	---	1	---
Adultery, Fornication, etc.	2	1	---
Violation Liquor Law, Second Offense	2	---	---
Desertion and Withholding Support from Wife and Children	2	8	---
Miscellaneous Crimes Not Otherwise Enumerated	---	1	---

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	35	34
Bond Validation Proceedings	6	6
Criminal Hearings Attended	41	41
Habeas Corpus Hearings Attended	24	24

Respectfully submitted,

J. C. ADKINS,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Gilchrist County, Eighth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	5	....	1
Manslaughter	2	....	....
Robbery:			
Armed	1	1	....
Unarmed	1	....	....
Assaults:			
With intent to Commit Felony	3	....	....
Other Assaults	1	....	....
Burglary and Kindred Offenses	4	....	....
Larceny:			
Of Automobiles	2	....	....
Of Cattle	1	....	....
Trespasses, Injuring Buildings, etc. ....	....	2	....
Desertion and Withholding Support from Wife and Children	2	2	2

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number Disposition	
Appeals from Lower Court to Circuit Court	3	3
Bond Validation Proceedings	1	1
Bond Estreuture Proceedings	48	48
Criminal Hearings Attended	12	12
Habeas Corpus Hearings Attended	6	6

Respectfully submitted,

J. C. ADKINS,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Levy County, Eighth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	8	3	2
Rape	2	....	1
Robbery:			
Armed	2	1	....

Assaults:			
With intent to Commit Felony	10	4	----
Other Assaults	1	----	----
Burglary and Kindred Offenses	15	2	2
Larceny:			
Of Automobiles	5	----	----
Of Cattle	1	----	----
Kindred Offenses	2	3	----
Forgery, Counterfeiting and Kindred Offenses	3	2	----
Adultery, Fornication, etc.	----	2	----
Desertion and Withholding Support from Wife and Children	2	4	----

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	8	8
Bond Validation Proceedings	2	2
Bond Estreuture Proceedings	16	16
Criminal Hearings Attended	11	----
Habeas Corpus Hearings Attended	6	6

Respectfully submitted,

J. C. ADKINS,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Holmes County, Ninth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	3	----	3
Manslaughter	----	1	----
Robbery:			
Armed	8	----	1
Assaults:			
With intent to Commit Felony	12	29	1
Arson and Kindred Offenses	2	2	----
Burglary and Kindred Offenses	10	11	1
Larceny:			
Of Cattle	3	5	----
Kindred Offenses	3	3	----
Embezzlement	----	1	----
Forgery, Counterfeiting and Kindred Offenses	3	----	----

Trespasses, Injuring Buildings, etc.	3	1	....
Resisting Arrest, etc.	2	1	....
Adultery, Fornication, etc.	2	....	2
Incest	2	....	....
Violation Liquor Law, Second Offense	4	2	2
Desertion and Withholding Support from Wife and Children	15	4	....
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Violating Pension Laws	1	....	....
Burning Woods ....	....	1	....
Altering Mark of Animal	3	....	2
Driv. Auto While Intoxicated	2	1	....
Aiding Escapes	2	....	2
Having Illicit Intercourse ....	....	2	....
Crime Against Nature	2	1	....
Shooting Into Dwelling House	1	....	....
Disp. of Mortg. Property	5	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court, 9; 1 affirmed, 5 not affirmed,
3 not disposed of.

	Number	Disposition
Criminal Hearings Attended	13	....
Other Cases Not Enumerated		
Handled by State Attorney	4	....

Respectfully submitted,

L. D. McRAE,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Washington County, Ninth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	....	....
Manslaughter	1	....	....
Robbery:			
Armed	4	6	....
False Imprisonment and Kidnapping	4	....	....
Assaults:			
With intent to Commit Felony	14	9	....
Libel and Defamation .....	....	5	....
Burglary and Kindred Offenses	18	3	3

Larceny:

Of Automobiles	1	---	---
Of Cattle	5	---	4
Kindred Offenses	6	---	5
Embezzlement	---	1	---
Forgery, Counterfeiting and Kindred Offenses	7	1	4
Trespasses, Injuring Buildings, etc.	1	7	---
Perjury	1	---	---
Violation Liquor Law, Second Offense	1	1	---
Desertion and Withholding Support from Wife and Children	7	1	---
Miscellaneous Crimes Not Otherwise Enumerated:			
Burning Woods	4	---	---
Operating Auto. While Intx.	2	---	---
Disposing of Mort. Property	---	2	---
Hit and Run Driver	---	1	---
Altering Mark of Animal	4	---	1
Operating Slot Machine, etc.	4	---	---
Concealing Stolen Property	2	---	---
Shooting Into Dwelling House	---	3	---

OTHER CASES HANDLED BY STATE ATTORNEYS

Number Disposition
 Appeals from Lower Court to Circuit, 1 not affirmed, 4 affirmed.
 Bond Estreature Proceedings, 2 not settled.

Respectfully submitted,

L. D. McRAE,
 State Attorney.

REPORT OF STATE ATTORNEY

Covering Polk County, Tenth Judicial Circuit, for Two Years,
 1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	17	8	4
Second Degree, 4, transferred to Crim. Ct. Record.			
Third Degree, 0, trans. to Crim. Ct. Record.			
Manslaughter, 3, trans. to Crim. Ct. Record.			
Rape	4	---	2
Miscellaneous Crimes Not Otherwise Enumerated:			
Subornation of Perjury	1	---	---

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	39	....
Bond Validation Proceedings	23	....
Bond Esteatue Proceedings	24	24
Habeas Corpus Hearings Attended	16	....
Other Cases Not Enumerated		
Handled by State Attorney	1	Bastardy 1
		1 Disbarment

Respectfully submitted,

J. C. ROGERS,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Dade County, Eleventh Judicial Circuit, for One Year
1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury
Homicide:		
First Degree	18	2
Manslaughter	2	....
Rape	5	2
Conspiracy	3	....
Unlawful Setting Up, Promoting and Conducting Lottery	1	....
Malpractice in Office	2	....
Failure and Refusal to Prosecute	1	....
Obstructing Justice	1	....
Issuing Obligation Bank Beyond Authorized Amount	1	....
Making False Entry	1	....
Misapplication of Funds	1	....
Failure to Arrest	1	....
Assault with Intent to Kill	1	....

First Degree Murder Cases Prosecuted	Convictions	Acquittal	Nol Pros
15	13	2	1
Rape Cases Prosecuted	Convictions	Acquittal	Nol Pros
3	2	1	1
Cases Referred to County Solicitor			31
Capital Cases Investigated (presumed to be capital)			43
Murder Cases Ready for Trial			5
Rape Cases Ready for Trial			2
Cases Awaiting Grand Jury Action			10

Investigation of:

Accidental Deaths	64
Natural Causes	37
Suicide	46
Attempt Suicide	32
Justifiable Homicide	10
Assault with Deadly Weapons	126
Skeletons Found	2
Murder Cases Investigated	
Where Accused Has Never Been Apprehended	8
Murder Cases Investigated Where Accused Is Dead	3
Habeas Corpus Hearings Attended	97
Bond Validation Proceedings	1
Bond Estreature Proceedings	82
Inquests Attended	117
Insanity Hearings	4
Contempt Hearings	1
Disbarment Motions Pending	3
Appeals from Lower Court to Circuit Court	24

Miscellaneous Proceedings Prosecuted:

Telephone Calls	4695
Personal Callers	3967
Attendance upon Grand Jury	33 days

Respectfully submitted,

VERNON HAWTHORNE,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Glades County, Twelfth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	---	---
Manslaughter	1	---	---
Assaults:			
With intent to Commit Felony	1	4	---
Burglary and Kindred Offenses	8	1	---
Larceny:			
Of Cattle	3	1	---
Adultery, Fornication, etc	---	2	---
Bigamy	2	---	---
Violation Liquor Law, Second Offense	1	1	---

Miscellaneous Crimes

Not Otherwise Enumerated:

Conducting House of Ill Fame	1	....
Allowing Minor to Loiter in Pool-room	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	....
Criminal Hearings Attended	3	....
Habeas Corpus Hearings Attended	1	....
Other Cases Not Handled by State Attorney	3	....

Respectfully submitted,

GUY M. STRAYHORN,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Charlotte County, Twelfth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	2	....
Second Degree .....	....	1	....
Robbery:			
Armed	1	....	....
Assaults:			
With intent to Commit Felony	3	1	1
Burglary and Kindred Offenses	6	2	....
Larceny:			
Of Automobiles	1	....	....
Of Cattle	5	1	....
Trespasses, Injuring Buildings, etc.	1	....	....
Perjury	1	3	....
Desertion and Withholding Support from Wife and Children	1	....	....
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Violation Motor Vehicle Law .....	....	1	....
Timber Stealing	4	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	....
Bond Validation Proceedings	1	....
Bond Estreature Proceedings	2	....
Criminal Hearings Attended	7	....
Habeas Corpus Hearings Attended	1	....

Respectfully submitted,

GUY M. STRAYHORN,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Hendry County, Twelfth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	1	....	....
Second Degree	3	....	1
Robbery:			
Armed	1	....	....
Assaults:			
With intent to Commit Felony	3	1	1
Burglary and Kindred Offenses	3	....	....
Larceny:			
Of Cattle	2	3	....
Kindred Offenses	1	1	....
Embezzlement	3	....	1
Perjury	3	1	1
Misconduct by Officers	1	1	....
Adultery, Fornication, etc.		1	....
Desertion and Withholding Support from Wife and Children		2	....
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Scattering Poison .....	....	1	....
Allowing Minors to Loiter			
in Pool-room	2	....	....
Challenge to Fight a Duel .....	....	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	....
Bond Estreature Proceedings	2	....
Criminal Hearings Attended	6	....

Habeas Corpus Hearings Attended	2	---
Other Cases Not Enumerated		
Handled by State Attorney	3	---

Respectfully submitted,

GUY M. STRAYHORN,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Lee County, Twelfth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	---	---
Second Degree	3	2	1
Manslaughter	2	3	---
Rape		1	---
Robbery:			
Unarmed	---	1	---
Assaults:			
With intent to Commit Felony	16	9	---
Other Assaults	4	---	---
Arson and Kindred Offenses	2	1	1
Burglary and Kindred Offenses	15	3	3
Larceny:			
Of Automobiles	2	1	---
Of Cattle	4	---	1
Kindred Offenses	6	2	2
Embezzlement	3	1	1
False Pretenses and Kindred Offenses.....		1	---
Forgery, Counterfeiting and Kindred Offenses	9	1	---
Bigamy	1	---	---
Crime Against Nature	3	---	---
Violation Liquor Law, Second Offense	6	2	4
Desertion and Withholding Support from Wife and Children	3	---	---
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Bad Check	1	---	---
Using Auto Without Consent Owner.....	1	---	---
Intercourse with Female Under 18....	2	1	---
Operating Gambling House	1	---	---
Operating Lottery	6	1	1
Intercourse with Imbecile	1	1	1
Trespass by Timber Stealing	4	3	---

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court, 15; 12 off, 3 rev.		
Bond Validation Proceedings	1	....
Bond Estreasure Proceedings	3	....
Criminal Hearings Attended	19	....
Habeas Corpus Hearings Attended	3	....
Other Cases Not Enumerated		
Handled by State Attorney	4	....

Respectfully submitted,

GUY M. STRAYHORN,

State Attorney.

REPORT OF STATE ATTORNEY

Covering Collier County, Twelfth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	3	....	1
Second Degree	3	....	1
Manslaughter	2	....	....
Assaults:			
With intent to Commit Felony	8	4	....
Burglary and Kindred Offenses	2	....	....
Larceny:			
Of Cattle .....	....	1	....
Kindred Offenses .....	....	1	....
Resisting Arrest, etc.	1	....	....
Adultery, Fornication, etc.	1	....	....
Violation Liquor Law, Second Offense	1	....	....
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Violation Fish Law .....	....	1	....
Timber Stealing	2	....	1
Scattering Poison	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	....
Bond Estreasure Proceedings	1	....
Criminal Hearings Attended	4	....
Habeas Corpus Hearings Attended	3	....

Respectfully submitted,

GUY M. STRAYHORN,

State Attorney.

REPORT OF STATE ATTORNEY

Covering Hillsborough County, Thirteenth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	19	12	2
Second Degree, 4 sent to County Solicitor.			
Manslaughter, 6 sent to County Solicitor.			
Secret Indictments.....	5	---	---
Rape	4	5	---

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court, 25, all finished but 8.		
Bond Validation Proceedings, 10, all validated.		
Criminal Hearings Attended	60	---
Habeas Corpus Hearings Attended	50	---
Other Cases Not Enumerated		
Handled by State Attorney	33	---
And many other matters and investigation and advice given too numerous to mention.		

Respectfully submitted,

C. B. PARKHILL,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Jackson County, Fourteenth Judicial Circuit for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	3	---	1
Second Degree	2	---	---
Manslaughter	1	---	1
Rape		1	---
Robbery:			
Armed	1	---	---
Unarmed	1	---	---
False Imprisonment and Kidnapping	2	---	1
Assaults:			
With intent to Commit Felony	11	7	3
Other Assaults	10	6	4
Libel and Defamation	1	---	1

Arson and Kindred Offenses	2	3	1
Burglary and Kindred Offenses	31	4	6
Larceny:			
Of Automobiles	10	2	2
Of Cattle	6	2	1
Kindred Offenses	12	1	5
Embezzlement	3	3	....
False Pretenses and Kindred Offenses	2	2	....
Forgery, Counterfeiting			
and Kindred Offenses	15	2	2
Trespasses, Injuring Buildings, etc. ....	....	1	....
Offenses Against Public Revenue	1	....	1
Perjury	13	9	3
Misconduct by Officers	1	....	1
Resisting Arrest, etc.	2	....	1
Adultery, Fornication, etc.	12	5	5
Incest .....	....	2	....
Violation Liquor Law, Second Offense	3	2	1
Desertion and Withholding Support			
from Wife and Children	27	12	5
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Hit and Run Driving	2	1	2
Disposing of Mortgaged Property	6	10	3
Maiming Animal	1	1	1
Escape .....	....	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

Number Disposition

Appeals from Lower Court to Circuit Court, 12; 8 affirmed, 4 reversed.

Respectfully submitted,

JNO. H. CARTER, JR.,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Calhoun County, Fourteenth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Nol-prossed and Verdicts of Not Guilty Returned
Homicide:			
First Degree	5	1	1
Rape	1	....	1
Robbery:			
Unarmed	1	....	1

Assaults:

With intent to Commit Felony	8	5	1
Other Assaults	6	4	2
Burglary and Kindred Offenses	4	2	....
Larceny:			
Of Cattle	4	1	2
False Pretenses and Kindred Offenses	1	....	1
Trespasses, Injuring Buildings, etc.	3	1	1
Adultery, Fornication, etc.	1	1	1
Desertion and Withholding Support			
from Wife and Children	3	....	....
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Hit and Run Driving	1	....	....
Disposing of Mortgaged Property ....	....	2	....

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court, 9; 8 affirmed, 1 reversed.
Habeas Corpus Hearings Attended, 1, released.

Respectfully submitted,

JNO. H. CARTER, JR.,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Gulf County, Fourteenth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Nol-prossed and Verdicts of Not Guilty Returned
Homicide:			
First Degree	1	1	....
Second Degree	4	....	2
Robbery:			
Armed	1	1	1
Unarmed	2	....	....
Arson and Kindred Offenses .....	....	1	....
Burglary and Kindred Offenses	7	2	1
Larceny:			
Of Cattle	2	....	....
Kindred Offenses	3	1	1
Embezzlement:			
Public Officers	1	....	....
False Pretenses and Kindred Offenses	1	....	1

Trespasses, Injuring Buildings, etc.	1	---	1
Desertion and Withholding Support from Wife and Children	1	---	---
Miscellaneous Crimes Not Otherwise Enumerated:			
Hit and Run Driving	1	---	1
Disposing of Mortgaged Property	1	---	---

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court, 5; 4 affirmed, 1 reversed.

Respectfully submitted,

JNO. H. CARTER, JR.,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Palm Beach County, Fifteenth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	19	1	2
Second Degree	1	---	---
Manslaughter	1	---	---

(In two of the above cases, first degree verdicts were returned; in two cases verdicts of not guilty; in seven cases, second degree verdicts; in five cases, verdicts of manslaughter; two are still pending; one case was remanded to Criminal Court of Record for trial).

(Under a special act we have four terms of Circuit Court each year).

Miscellaneous Crimes

Not Otherwise Enumerated:

Nine cases handled before Circuit Court in liquor violation cases. These cases involved the forfeiture of property and liquor seized in liquor law violations.

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Validation Proceedings, 1, undisposed of.		
Criminal Hearings Attended	21	---
Habeas Corpus Hearings Attended	7	---

Respectfully submitted,

L. R. BAKER,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Lake and Sumter Counties, Sixteenth Judicial Circuit, for Two
 Years, 1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	16	11	1
Manslaughter	1	1	....
Mayhem .....	....	1	....
Rape .....	....	1	....
Robbery:			
Armed	9	3	1
Unarmed	2	....	1
False Imprisonment and Kidnapping ....	....	1	....
Assaults:			
With intent to Commit Felony	18	28	1
Other Assaults .....	....	1	....
Libel and Defamation .....	....	1	....
Arson and Kindred Offenses	3	1	2
Burglary and Kindred Offenses .....	....	1	....
Larceny:			
Of Automobiles	4	2	....
Of Cattle	2	2	....
Embezzlement	7	3	....
False Pretenses and Kindred Offenses	2	2	....
Forgery, Counterfeiting and Kindred Offenses	8	9	1
Trespasses, Injuring Buildings, etc.	1	3	....
Perjury .....	....	1	....
Adultery, Fornication, etc. ....	....	1	....
Violation Liquor Law, Second Offense	3	1	....
Desertion and Withholding Support from Wife and Children	12	10	....
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Breaking and Entering	17	5	1
Prac. Medicine without License .....	....	1	....
Receiving Stolen Goods	4	....	....
Driving while Intoxicated	1	....	....
Removing Property under Lien	4	1	1
Obstructing Railroad .....	....	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court, 20, affirmed.		
Bond Validation Proceedings, 11, closed.		•
Criminal Hearings Attended	31	---
Habeas Corpus Hearings Attended	12	---

Respectfully submitted,

J. W. HUNTER,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Orange County, Seventeenth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	8	2	1
Embezzlement:			
Public Officers	26	---	3
Misconduct by Officers	22	---	---

Miscellaneous Crimes

Not Otherwise Enumerated:

None, except under Misconduct by Officers cited above. Five of those were for making false reports to the Comptroller and 17 were for failure to make reports to Comptroller, making a total of 22 indictments for

Misconduct by Officers.

No indictments quashed. No cases nolle prosequi. All cases indicted disposed of, except those certified to the Criminal Court, where all of the indictments are pending, except the three mentioned.

There has been no accurate record kept on Habeas cases by the clerk of the Circuit Court because of the fact that the papers and proceedings have not been filed for record in that office for the reason that when the petitioner is remanded, the cost would have to be borne by his attorney or the petitioner, therefore attorneys do not take the papers, after an order remanding, down to the clerk's office and have the whole thing filed. It is only when there is an order of discharge that the papers are taken down stairs and filed with the clerk. It is the opinion of the Judge and the undersigned, that we handle not less than 50 Habeas Corpus cases a year. The number set forth in this report is far from being the true record.

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court, 13; 2 reversed, 5 affirmed, 5 dismissed, 1 undisposed.

Bond Validation Proceedings, 5, validated.

Criminal Hearings Attended, 22, bound over.

Habeas Corpus Hearings Attended, 17; 9 remanded, one continued, 7 discharged.

Respectfully submitted,

H. F. MOHR,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Osceola County, Seventeenth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	1	....	1
Robbery:			
Armed	1	....	....
Assaults:			
With intent to Commit Felony	7	1	1
Other Assaults	2	....	....
Sending Threatening Communications	1	....	1
Arson and Kindred Offenses	3	....	1
Burglary and Kindred Offenses	5	1	1
Larceny: Kindred Offenses	15	....	1
False Pretenses and Kindred Offenses	1	....	....
Forgery, Counterfeiting and Kindred Offenses	5	....	....
Perjury	2	....	....
Resisting Arrest, etc.	1	....	....
Bigamy	1	....	....
Desertion and Withholding Support from Wife and Children .....	....	1	....

Miscellaneous Crimes

Not Otherwise Enumerated:

One case nol-prossed.

One indictment for Perjury quashed.

One indictment found on Chapter 15602, Acts of Legislature, 1931, quashed on the ground that the Statute is unconstitutional, the Act being broader than the title, the title saying Property of Value, while the Act says all property or any property whether of value or not. In my opinion, this defect should be remedied.

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Estreature Proceedings	1	undisposed
Criminal Hearings Attended	12	Bound over
Habeas Corpus Hearings Attended	1	Remanded for proper sentence

Respectfully, submitted,

H. F. MOHR,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Manatee County, Eighteenth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	True Bills Voted by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	7	2	3
Manslaughter	---	2	---
Mayhem	1	---	---
Rape	---	1	---
Robbery:			
Armed	2	2	---
Unarmed	6	1	1
False Imprisonment and Kidnapping	9	3	---
Assaults:			
With intent to commit felony	16	12	4
Other assaults	1	---	---
Arson and Kindred Offenses	1	3	1
Burglary and Kindred Offenses	72	13	13
Larceny:			
Of automobiles	9	4	1
Of cattle	6	6	2
Kindred Offenses	5	7	1
Embezzlement	1	2	1
Other Kinds	3	3	---
False Pretenses	1	2	---
Forgery, Counterfeiting			
Kindred Offenses	26	1	3
Bribery	1	4	---
Resisting Arrest	2	---	---
Adultery, Fornication, etc.	2	8	---
Incest	2	---	---
Violation of liquor law, second offense	2	2	1
Desertion and withholding support			
from Wife and Child	16	12	2

Maliciously killing steer	2	1	....
Lottery and gambling place	5	1	....
Concealed Weapons	2	....	....
Exhibit Dangerous Weapons	1	....	....
Threats—Extortion	10	1	1
Altering Mark	5	3	2
Notorious and common thief	1	....	....
Affray	1	....	....
Distributing obscene literature	2	....	....
Receiving stolen property	4	....	....
Shooting at dwelling .....	....	2	....
TOTALS	234	98	36

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeal from Lower Court to Circuit Court	5	Completed
Bond Validation Proceedings	3	Completed
Bond Estreature Proceedings	6	Completed
Criminal Hearings Attended	13	Completed
Habeas Corpus Hearings Attended	13	Completed
Other Cases not Enumerated	21	Completed
Total	61	

IN GENERAL

I have also attended terms of court in Citrus, Pasco, Pinellas and Sarasota Counties to prosecute special cases or to represent the State during the term by assignment of the Governor. Approximately two months time was consumed on these transfers.

In addition to specific matters listed above, I represented the State in proceedings authorized by Chapter 14851, Laws of 1931, and also briefed the matter on writ of error to the Supreme Court. This litigation terminated favorably to the State. See *Coarsey v. State*, 141 So. 740.

Subsequently the petitioner, H V. Coarsey, sought by mandamus to compel the resident Circuit Judge to assume jurisdiction. This petition was brought in the Supreme Court. By demurrer and motion to quash, acting as State Attorney, I represented the Circuit Judge before the Supreme Court. The proceedings were presented on brief and in oral argument. The alternative writ was quashed and the law held unconstitutional. See *State ex rel. H. V. Coarsey, v. W. T. Harrison, as Circuit Judge*. (Opinion not yet published.)

Other cases handled in the Supreme Court were: *State ex rel. Jesse Levy V. Davidson, as Sheriff*, 140 So. 326, and *State ex rel. Willie Cherry V. Davidson, as Sheriff*, 139 So. 177. These were Habeas Corpus hearings, both instituted as original jurisdiction in the Supreme Court. In one, the

petitioner was remanded to custody. In the other (the Cherry case), the statute under which the state was moving against petitioner as a common and notorious thief was held to be inapplicable to previous convictions for misdemeanor.

Three informations charging convicted defendants as habitual offenders have been filed.

Of 138 defendants arraigned for trial, 102 have been adjudged guilty.

To recapitulate, 332 matters have been presented to grand juries, 138 to trial courts, 61 miscellaneous proceedings have been disposed of and four cases were argued before the Supreme Court. All this does not take into account hearings, arguments on motions in arrest or for new trial and usual attacks on indictments, or time consumed in investigations of law and fact or examination of witness extrajudicially.

As a separate communication I hand you herewith for transmission to the Legislature some suggestions with reference to changes in the criminal law and practice of the State.

Respectfully submitted,

DEWEY A. DYE,
State Attorney.

REPORT OF STATE ATTORNEY

Covering DeSoto, Hardee and Highlands Counties, Nineteenth Judicial Circuit for Two Years, 1931-1932, Under Section 132,
Compiled Laws of Florida

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	6	2	2
Manslaughter	---	2	---
Rape	3	---	1
Robbery:			
Armed	15	---	1
False Imprisonment and Kidnapping	---	1	---
Assaults:			
With intent to Commit Felony	18	11	6
Other Assaults	10	5	2
Arson and Kindred Offenses	2	1	1
Burglary and Kindred Offenses	50	9	2
Larceny:			
Of Automobiles	12	2	1
Of Cattle	3	2	---
Kindred Offenses	12	7	4
Embezzlement	4	5	---
False Pretenses and Kindred Offenses	2	1	---

Forgery, Counterfeiting and Kindred Offenses	18	3	1
Resisting Arrest, etc.	5	....	4
Adultery, Fornication, etc.	2	6	....
Incest	5	....	....
Desertion and Withholding Support from Wife and Children	2	12	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Removing Mortgaged Property	3	....	....
Receiving Stolen Property	2	1	1
Gaming House	7	....	3
Sale Lottery Ticket	1	....	1
Negligence	1	....	....
Killing Animal of Another	5	2	....
Changing Mark	1	4	....
Cutting Fence	1	....	....
Arsenic Cases	3	2	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court, 21; 2 reversed, 19 affirmed.		
Bond Validation Proceedings	7	....
Criminal Hearings Attended (no record).		
Habeas Corpus Hearings Attended	6	....

Respectfully submitted,

L. GRADY BURTON,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Monroe County, Twentieth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	1	2	1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	5	....
Habeas Corpus Hearings Attended	4	....
Other Cases Not Enumerated Handled by State Attorney	2	....

Respectfully submitted,

GEO. G. BROOKS, JR.,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Martin County, Twenty-first Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	---	1
Manslaughter	---	1	---
Assaults:			
With intent to Commit Felony	4	1	---
Other Assaults	1	---	---
Burglary and Kindred Offenses	10	---	---
Larceny:			
Kindred Offenses	4	1	---
Embezzlement	---	1	---
Forgery, Counterfeiting and Kindred Offenses	1	---	1
Resisting Arrest, etc.	1	---	---
Violation Liquor Law, Second Offense	---	1	---
Desertion and Withholding Support from Wife and Children	1	---	---
Miscellaneous Crimes Not Otherwise Enumerated:			
Section 7556	---	1	---
Tampering with Railway Switch	1	---	---

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	31	---

Respectfully submitted,

ANGUS SUMNER,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Okeechobee County, Twenty-first Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	---	---
Assaults:			
With intent to Commit Felony	2	---	---
Other Assaults	1	---	---
Burglary and Kindred Offenses	4	1	2

Larceny:

Of Automobiles	1	....	....
Kindred Offenses	4	1	....
Embezzlement .....	....	1	....
Forgery, Counterfeiting and Kindred Offenses	1 *	....	....
Adultery, Fornication, etc. ....	....	1	....

Respectfully submitted,

ANGUS SUMNER,
State Attorney.

REPORT OF STATE ATTORNEY

Covering St. Lucie County, Twenty-first Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	1	....	....
Assaults:			
With intent to Commit Felony	3	1	....
Other Assaults	1	....	....
Burglary and Kindred Offenses	8	3	....
Larceny:			
Of Automobiles	5	3	....
Of Cattle	1	....	....
Kindred Offenses	4	1	2
Forgery, Counterfeiting and Kindred Offenses	3	....	....
Adultery, Fornication, etc. ....	....	1	....
Violation Liquor Law, Second Offense,	1	....	....
Desertion and Withholding Support from Wife and Children .....	....	2	....
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Shooting into Dwelling .....	....	1	....
Operating Gambling House	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	....

Respectfully submitted,

ANGUS SUMNER,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Indian River County, Twenty-first Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	---	---
Manslaughter	---	1	---
Rape	---	1	---
Robbery:			
Armed	1	---	---
Assaults:			
With intent to Commit Felony	10	3	1
Other Assaults	1	---	---
Burglary and Kindred Offenses	13	2	1
Larceny:			
Kindred Offenses	5	2	1
Embezzlement:			
Public Officers	6	---	---
False Pretenses and Kindred Offenses	---	1	---
Forgery, Counterfeiting and Kindred Offenses	2	1	---
Trespasses, Injuring Buildings, etc.	5	---	---
Violation Liquor Law, Second Offense	2	---	1
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Resisting Officer	1	1	---
Conveying Tools in Jail	---	1	---

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Estreature Proceedings	1	---
Criminal Hearings Attended	61	---
Habeas Corpus Hearings Attended	3	---
Other Cases Not Enumerated		
Handled by State Attorney	1	---

Respectfully submitted,

ANGUS SUMNER,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Broward County, Twenty-second Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Defendants Grand Jury Indicted by	No Bills Returned by Grand Jury	Nolle Prossed	Verdicts of Not Guilty Returned
Homicide:				
First Degree	8	1	....	1
Second Degree	1	1	1	....
Manslaughter	3	....	....	3
Mayhem .....	....	1	....	....
Rape (female under 18)	2	....	1	1
Robbery:				
Armed	9	....	1	1
Unarmed .....	....	1	....	....
Assaults:				
With intent to Commit				
Felony	14	4	2	....
Burglary and Kindred				
Offenses	57	10	5	6
Larceny:				
Of Automobiles	9	....	....	1
Of Cattle .....	....	1	....	....
Kindred Offenses	8	....	....	....
Embezzlement:				
Public Officers	1	....	....	1
Other Kinds	1	5	....	1
False Pretenses and				
Kindred Offenses	1	....	....	....
Forgery, Counterfeiting				
and Kindred Offenses	7	....	2	....
Resisting Arrest, etc.	1	....	....	....
Desertion and Withholding				
Support from Wife and				
Children	5	3	....	1
Miscellaneous Crimes				
Not Otherwise Enumerated:				
Accessories	3	4	1	1
Unlawful Entry Farm				
or Grove	2	....	....	....
Shooting Occupied Dwelling	1	....	....	....
Receiving Stolen				
Property, etc.	11	4	4	1

(All of foregoing relate to Felonies only. See following table for record of Misdemeanor indictments returned).

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Estreature Proceedings, 5; 3 pending.		
Habeas Corpus Hearings Attended, 12; 2 discharged.		
Liquor Confiscation Cases	94	....
Bill to Restore Rights of Insane Person, attending....	1	....
Adoption Hearing, attending	1	....

Respectfully submitted,

LOUIS F. MAIRE,
State Attorney.

Misdemeanor Indictments Returned, Triable in County Court

Concealing Death of Bastard Child	1
Operating Automobile Intoxicated	1
Conspiracy (3 defendants)	1
Unlawful Possession Liquor (2 defendants)	1
Petit Larceny (3 defendants)	2
Exhibiting Dangerous Weapon	2
Malicious Injury to Personal Property (2 defendants)	1

(The disposition of the foregoing misdemeanors should be shown in Report of County Prosecuting Attorney).

No True Bills Returned on Misdemeanors

Setting Fire to Everglades	1
----------------------------------	---

Disposition of Old Cases, Shown as "Pending" on Former Report

Charge	Nolle Prossed	Total	Acquitted	Convicted
Burglary, etc.	2	3	....	1
Grand Larceny .....	....	1	1	....
Perjury	1	1	....	....
Second Degree Murder	1	1	....	....
Desertion	2	2	....	....
Assault to Commit Felony	1	1	....	1

Recapitulation on Disposition of Felonies Since Former Report

Number Indictments Returned	111
Number Defendants Indicted	146
Number Indictments Nolle Prossed	17
Number Defendants Acquitted	18
Number Indicted Pending	19
Number Convictions	92
Number No True Bills	36

Respectfully submitted,

LOUIS F. MAIRE,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Seminole County, Twenty-third Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	6	---	1
Manslaughter	1	---	---
Robbery:			
Armed	1	---	---
Unarmed	1	---	---
Assaults:			
With intent to Commit Felony	18	---	2
Other Assaults	2	2	---
Arson and Kindred Offenses	1	1	---
Burglary and Kindred Offenses	34	6	6
Larceny:			
Grand	3	1	2
Of Automobiles	6	---	2
Embezzlement:			
Public Officers	1	---	---
False Pretenses and Kindred Offenses	1	---	---
Forgery, Counterfeiting and Kindred Offenses	8	---	---
Trespasses, Injuring Buildings, etc.	2	---	---
Crime Against Nature	---	1	---
Desertion and Withholding Support from Wife and Children	3	2	---
Miscellaneous Crimes Not Otherwise Enumerated			
Receiving Stolen Goods	4	2	1
Accessory After Murder	---	1	---

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	12	---
Habeas Corpus Hearings Attended	20	---

Respectfully submitted,

LLOYD F. BOYLE,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Brevard County, Twenty-third Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	5	2	1
Second Degree	1	---	---
Mayhem	---	2	---
Rape	1	---	---
Robbery:			
Armed	3	---	---
Assaults:			
With intent to Commit Felony	7	---	---
Other Assaults	2	4	---
Arson and Kindred Offenses	1	---	---
Larceny:			
Of Automobiles	1	---	---
Kindred Offenses	5	2	---
Forgery, Counterfeiting and Kindred Offenses	4	---	1
Trespasses, Injuring Buildings, etc.	12	---	1
Offenses Against Public Revenue	5	1	---
Adultery, Fornication, etc.	1	1	---
Desertion and Withholding Support from Wife and Children	4	---	---
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Conveying Tools into Jail	1	---	---
Receiving Stolen Goods	1	---	---
Violation Fishing Laws	1	---	---
Burning Woods	1	---	---
Lascivious Conduct	1	---	---
Circulating Charge Against Candidate within 18 Days of Primary	2	---	---

OTHER CASES HANDLED BY STATE ATTORNEYS

		Number	Disposition
Habeas Corpus Hearings Attended	12	---	---

Respectfully submitted,

LLOYD F. BOYLE,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Citrus County, Twenty-fourth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	....	....
Manslaughter	2	....	1
Robbery:			
Armed	2	....	....
Assaults:			
With intent to Commit Felony	10	1	1
Larceny:			
Of Automobiles	1	....	....
Kindred Offenses	2	....	....
Embezzlement .....	....	....	1
Trespasses, Injuring Buildings, etc.	2	....	....
Desertion and Withholding Support from Wife and Children .....	....	1	....
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Breaking and Entering	9	1	....
Robbery	1	1	....
Obstructing Officer	1	....	....
Carrying Concealed Weapons	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court, 4; 3 affirmed, 1 reversed.		
Bond Validation Proceedings	4	....
Habeas Corpus Hearings Attended	3	....

Respectfully submitted,

M. C. SCOFIELD,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Hernando County, Twenty-fourth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	....	....
Mayhem	2	....	....
Robbery:			
Armed	1	....	....

Assaults:			
With intent to Commit Felony	2	....	....
Larceny:			
Of Automobiles	2	....	....
Embezzlement	1	....	....
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Breaking and Entering	6	....	2
Arson	2	....	....
Operating Auto without License	2	....	....
Maliciously Burning Automobile	2	....	1
Hit and Run Driver	1	....	....
Maliciously Shooting Bull .....	....	1	....
Concealed Weapon	1	....	....
Becoming Drunk and Intoxicated	1	....	....
Profane and Indecent Language	1	....	....
Trespass on Realty	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	3	....
Habeas Corpus Hearings Attended	1	....

Respectfully submitted,

M. C. SCOFIELD,
State Attorney.

REPORT OF STATE ATTORNEY

Covering St. Johns County, Twenty-fifth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	6	....	2
Robbery:			
Armed	19	1	....
Assaults:			
With intent to Commit Felony	8	....	....
Arson and Kindred Offenses	1	....	....
Burglary and Kindred Offenses	25	....	3
Larceny:			
Of Automobiles	2	....	....
Of Cattle	1	....	....
Kindred Offenses	1	....	....
False Pretenses and Kindred Offenses	1	....	....
Forgery, Counterfeiting	....		
and Kindred Offenses	1	....	....

Violation Liquor Law, Second Offense	6	....	....
Desertion and Withholding Support from Wife and Children	1	....	....
Miscellaneous Crimes			
Not Otherwise Enumerated			
Intercourse with Unmarried Female	1	....	....
Receiving Stolen Property	2	....	....
Aiding Concealment Stolen Property	2	....	....
Selling Personal Property under Lien	3	....	....
Improper and Illegal			
Possession of Milk	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	....
Bond Estreature Proceedings	9	....
Habeas Corpus Hearings Attended, 4, all denied.		

Respectfully submitted,

JULIAN C. CALHOUN,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Putnam County, Twenty-fifth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	5	....	1
Rape	2	....	....
False Imprisonment and Kidnapping	1	....	....
Assaults:			
With intent to Commit Felony	6	2	....
Other Assaults	2	....	....
Sending Threatening Communications ....	....	3	....
Arson and Kindred Offenses	1	....	....
Burglary and Kindred Offenses	16	1	1
Larceny:			
Of Automobiles	1	1	....
Of Cattle	1	....	....
Kindred Offenses	5	1	....
Embezzlement	2	....	....
Forgery, Counterfeiting and Kindred Offenses	4	1	....
Trespasses, Injuring Buildings, etc. ....	....	1	....

Conspiracy	2	....	....
Bigamy	1	....	....
Desertion and Withholding Support from Wife and Children .....	....	3	....
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Operating a Gambling Room	1	....	....
Buying Stolen Property	2	....	....
Offering for Sale Stock of Domestic Investment Corporation without Permit	1	....	....
Assuming to Act as Stock Agent for Corporation without Registering with Comptroller	1	....	....
Receiving Stolen Goods .....	....	1	....
Concealing Stolen Goods .....	....	1	....
Aiding in Escape .....	....	1	....

Respectfully submitted,

JULIAN C. CALHOUN,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Flagler County, Twenty-fifth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	5	2	1
Assaults	1	....	....
Larceny:			
Of Automobiles	1	....	....
Kindred Offenses .....	....	1	....
Embezzlement			
Public Officers	1	....	....
Forgery, Counterfeiting and Kindred Offenses	3	....	....
Bigamy .....	....	1	....
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Changing Brand on Hogs .....	....	1	....
Receiving Stolen Property	1	....	....
Illegal Burning of Woods .....	....	2	....

Respectfully submitted,

JULIAN C. CALHOUN,
State Attorney.

MEMORANDA FOR JULIAN C. CALHOUN, 1931 AND 1932

- June 1931 J. W. Cannon, larceny of auto, absentee docket.
Lee Weaver, murder first degree, plead not guilty, found not guilty.
- November 1931 Dan M. White, robbery with arms, plead not guilty, found guilty, sentenced eight years State Pen (bond estreated June 10, 1931).
- June 1931 C. H. Brown, robbery with arms, absentee until fall term, 1932, indictment lost in meantime, after conviction of White, matter again brought before Grand Jury at fall term, 1932, and no bill found.
L. E. Parrish, improper and illegal possession of milk, plead not guilty, nolle prosequi entered.
W. M. Arnold, robbery with arms, plead not guilty, mistrial declared, later nolle prosequi entered.
Hubert Brooker (indicted with Arnold), absentee.
Louis Presswood, robbery with arms, indicted with W. M. Arnold, nolle prosequi.
J. P. Coleman, appeal from County Judge's Court, no disposition made to date.
Morris Kelly, robbery with arms, plead guilty, five years State Pen.
Ralph Smith, robbery with arms, plead guilty, three years State Pen.
Edgar Admire, Jr., robbery with arms, plead not guilty, nolle prosequi.
Leon Wellen, robbery with arms, pending.
Neeley Kukowsky, robbery with arms, pending.
Leon Wellen, robbery with arms, pending.
Neeley Kukowsky, robbery with arms, pending.
Leon Wellen, robbery with arms, pending.
Neeley Kukowsky, robbery with arms, pending.
Leon Wellen, robbery with arms, plead not guilty, found guilty, sentenced to 10 years State Pen.
Neeley Kukowsky, robbery with arms, plead not guilty, found guilty, sentenced three years State Pen.
Leon Wellen, assault with intent to commit murder, pending.
Lillie Clark, assault with intent to murder, plead guilty to aggravated assault, placed in custody of Father Knight.
Judson Walker, receiving stolen property, absentee.
John Shea, breaking and entering, plead not guilty, found not guilty.
Raymond Hutchinson, breaking and entering, plead not guilty, found not guilty.

- June 1931 Paul Rothenberger, alias James Smith, forgery and uttering forgery, plead guilty to forgery, sentenced two years State Pen, nolle prosequi as to uttering forgery.
Flossie Ellison, breaking and entering, plead guilty, five years State Pen.
Sam Daniels, breaking and entering, absentee.
Julia Wilson, arson, plead not guilty, mistrial declared, nolle prosequi entered.
Judd White, murder in first degree, plead guilty to manslaughter, sentenced 20 years State Pen.
H. L. Drexel, assault intent to murder, plead guilty, five years.
H. L. Drexel, assault intent to murder, pending.
H. L. Drexel, assault intent to murder, pending.
G. L. Robinson, fraud, bond estreated and judgment entered June 10, 1931, for \$10,000.00 each against two sureties, compromised by County Commissioners for \$1,000.00.
Harry Cook, alias Harry Rooney, bond estreatment proceedings, pending.
Dan M. White, estreatment proceedings, \$2,000.00 bond estreated June, 1931, judgment entered November 13, 1931.
- November 1931 Frank Stewart, possession of liquor, bond \$500.00 estreated, compromised by County Commissioners for \$250.00.
Frank Stewart, transporting liquor, bond \$500.00 estreated, compromised by County Commissioners for \$250.00.
W. R. Janes, possession liquor, \$500.00 bond estreated, compromised by County Commissioners for \$250.00.
W. R. Janes, transporting liquor, bond \$500.00 estreated, compromised by County Commissioners for \$250.00.
Robt. Lee, possession liquor, bond \$500.00 estreated, compromised by County Commissioners for \$250.00.
Robt. Lee, transporting liquor, bond \$500.00 estreated, compromised by County Commissioners for \$250.00.
Missie Dean, receiving stolen property, plead not guilty, nolle prosequi.
T. J. Davis, breaking and entering, plead guilty, sentence withheld.
Sidney Davis, breaking and entering, plead guilty, sentence withheld.
Luther Guthrie, breaking and entering, plead guilty, sentenced one year county jail.
Charlie Williams, breaking and entering, plead not guilty, found guilty, five years.

- November 1931 Eddie Stephens, desertion, plead not guilty, pending.
 Vincent Williams, breaking and entering, plead guilty, sentenced two years.
 Alton Walker, murder first degree, plead not guilty, found not guilty.
 Alex Belcher, breaking and entering, plead guilty, sentenced three years county jail.
 Charlie Phillips, breaking and entering, found guilty, sentenced three years county jail.
 Henry Richardson, breaking and entering, pending.
 J. S. Durant, hit and run driver, pending.
 Bill Delaney, alias W. R. Janes, assault with intent to murder, nolle prosequi.
 J. H. Faaborg, aiding in concealment of stolen property, plead not guilty, found guilty, sentence withheld.
 Percy Davis, aiding in concealment of stolen property, plead not guilty, found guilty, sentenced four months county jail (restitution made).
 Ralph Goodwin, breaking and entering, plead guilty, sentence withheld.
 Wilson Kearns, breaking and entering, absentee.
 Charlie Williams, larceny of steer, plead not guilty, found guilty, sentenced two years State Pen.
 Jessie Perry, breaking and entering, plead guilty, five years State Pen.
 M. M. Rozelle, alias R. L. Mimms, assault with intent to murder, absentee.
- June 1932 Ray Phillips, larceny of automobile, plead guilty, one year State Pen.
 Claude Nespo, breaking and entering, plead guilty, two years State Pen.
 Willie Bell, breaking and entering, plead guilty, five years State Pen.
 David Tenant, breaking and entering, plead guilty, five years State Pen.
 John McDowell, murder first degree, plead guilty murder in second degree, life imprisonment.
 Gordon Edenfield, assault with intent to murder, plead guilty, sentence three years State Pen.
 A. G. Hoebel, breaking and entering, plead guilty, two years State Pen.
 Robert Ludgate, grand larceny, guilty, two years State Pen.
 Jordon V. Jenkins, alias Thos. Dixon, robbery with arms, absentee.
 Moses Foose, robbery with arms, plead not guilty, found guilty, sentenced 10 years.

June	1932	Earl Foose, robbery with arms, plead not guilty, found guilty, sentenced five years State Pen.
		Edmund Capo, intercourse with unmarried female, under 18, plead not guilty, found guilty, sentenced to five years State Pen.
		Harry Bucholtz, selling personal property subject to lien, plead not guilty, indictment quashed.
		M. I. Pincus, selling personal property under lien, plead not guilty, pending.
		Rollin Welters, breaking and entering, plead guilty, two years State Pen.
		C. E. Woodson, breaking and entering, plead not guilty, found guilty, two years State Pen.
		Otto Drew, breaking and entering, absentee.
		Carl Humphries, breaking and entering, absentee.
		Nathan Levine, breaking and entering, plead not guilty, found not guilty.
		Harry Bucholtz, disposing of personal property under lien, plead not guilty, found guilty, pending.
November	1932	Dave Saxton, murder first degree, plead guilty to murder in the second degree, life imprisonment.
		James Taylor, murder in first degree, absentee.
		Boise Stillman, robbery with arms, pending, absentee.
		Lonnie Masters, entering without breaking, plead guilty, paroled in custody of father.
February	1932	Edmund Capo, habeas corpus proceeding, motion for writ denied.
September	1931	George Ray Glisson, habeas corpus proceedings, writ dismissed.
		No bills found, twenty (20).
		Submitted December 27, 1932.

REPORT OF STATE ATTORNEY

Covering Baker County, Twenty-sixth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	6	....	I
Manslaughter	I	....	....
Robbery:			
Armed	I	....	....
Assaults:			
With intent to Commit Felony	6	....	I
Other Assaults	7	I	....

Larceny:

Of Cattle	4	....	1
Kindred Offenses	2	....	....
Forgery, Counterfeiting and Kindred Offenses	1	....	....
Trespasses, Injuring Buildings, etc.	1	....	....
Misconduct by Officers	6	....	6
Desertion and Withholding Support from Wife and Children	1	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Breaking and Entering	5	....	....
Living in Adultery	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

Bond Validation Proceedings, 2, validated.

Bond Estreature Proceedings, 1, defendant delivered.

Criminal Hearings Attended, 5, bound over.

Respectfully submitted,

A. S. CREWS,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Bradford County, Twenty-sixth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	4	....	1
Manslaughter	1	....	....
Robbery:			
Armed	2	....	....
Assaults:			
With intent to Commit Felony	15	1	2
Other Assaults	2	....	....
Burglary and Kindred Offenses	1	....	....
Larceny:			
Of Automobiles	1	....	....
Of Cattle	2	....	....
Kindred Offenses	2	1	1
Embezzlement	2	....	....
Desertion and Withholding Support from Wife and Children	2	....	1

Miscellaneous Crimes

Not Otherwise Enumerated:

Breaking and Entering	8	1	....
Entering Without Breaking	2	....	....
Receiving Stolen Property	1	....	....
Killing Animals	1	....	Not Tried
Selling Mortgaged Property	1	....	....
Enticing Girl Away for Prostitution	1	....	....
Bigamy	1	....	Not Tried
Attempt to Steal Hogs	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court, 2, affirmed.		
Bond Estreature Proceedings	1	....
Criminal Hearings Attended	3	....
Habeas Corpus Hearings Attended	5	....

Respectfully submitted,

A. S. CREWS,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Union County, Twenty-sixth Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	4	....	....
Manslaughter	1	....	....
Assaults:			
With intent to Commit Felony	3	....	....
Other Assaults	1	....	....
Larceny:			
Of Cattle	2	....	....
Kindred Offenses	2	....	....
Perjury	1	....	....
Miscellaneous Crimes			
Not Otherwise Enumerated:			
Breaking and Entering	8	....	....
Trespass and Cutting Timber	1	....	1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended	4	Bound Over
Habeas Corpus Hearings Attended	15	....

Respectfully submitted,

A. S. CREWS,
State Attorney.

REPORT OF STATE ATTORNEY

Covering Sarasota County, Twenty-seventh Judicial Circuit, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	3	1	1
Third Degree	1	....	....
Manslaughter .....	....	1	....
Robbery:			
Armed	3	....	....
Unarmed	2	....	1
False Imprisonment and Kidnapping	1	1	....
Assaults:			
With intent to Commit Felony	11	7	1
Other Assaults	2	2	....
Arson and Kindred Offenses	1	1	....
Burglary and Kindred Offenses	40	18	6
Larceny:			
Of Automobiles	3	2	....
Of Cattle	2	1	....
Kindred Offenses	19	11	4
Embezzlement	3	3	1
False Pretenses and Kindred Offenses	1	1	....
Forgery, Counterfeiting and Kindred Offenses	7	3	1
Perjury	2	....	1
Resisting Arrest, etc.	1	....	....
Conspiracy	1	....	....
Adultery, Fornication, etc. ....	....	1	....
Crime Against Nature .....	....	1	....
Desertion and Withholding Support from Wife and Children	3	6	....

Miscellaneous Crimes

Not Otherwise Enumerated:

Selling Bolita Tickets .....	....	3	....
Receiving Stolen Property	2	1	1
Blackmail .....	....	1	....

Investigations into Disappearance of Mrs. Pearl Beeler of Nokomis.

OTHER CASES HANDLED BY STATE ATTORNEYS

Criminal Hearings Attended, 25, bound over in all cases except three.

Habeas Corpus Hearings Attended, 10 all remanded to custody except two.

Respectfully submitted,

HENRY L. WILLIFORD,

State Attorney.

(By James Kirk)

Explanatory Statement in Connection With Verdicts of Not Guilty Returned

In several instances which will hereinafter be stated, the verdict of Not Guilty was only as to one or two of the defendants out of four defendants being tried under the indictment.

The one verdict of Not Guilty returned under Burglary and Kindred Offenses was as to one out of four defendants being tried under one of the indictments.

As to Kindred Offenses in connection with Larceny, in each one of the verdicts of Not Guilty returned, two or three of the defendants out of the four being tried under the indictments were convicted, and only one or two were found Not Guilty.

REPORT OF STATE ATTORNEY

Covering Bay County, Twenty-eighth Judicial Circuit, for Two Years
1931-1932, Under Section 132, Compiled General Laws

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	2	....
Second Degree	1	....	....
Manslaughter	2	2	1
Rape	1	....	1
Robbery:			
Armed	11	2	6
Unarmed .....	....	3	....
Assaults: .			
With intent to Commit Felony	13	3	3
Other Assaults	2	1	1
Arson and Kindred Offenses	10	1	10
Burglary and Kindred Offenses	30	15	....

Larceny:

Of Automobiles	3	2	....
Of Cattle	6	....	....
Kindred Offenses	7	7	I
Embezzlement .....	....	1	....
False Pretenses and Kindred Offenses	2	1	I
Forgery, Counterfeiting and Kindred Offenses	3	....	....
Trespasses, Injuring Buildings, etc.	1	....	I
Perjury .....	....	2	....
Adultery, Fornication, etc. ....	....	2	....
Incest	1	....	I
Bigamy	1	....	....
Desertion and Withholding Support from Wife and Children	6	1	....
Miscellaneous Crimes			
Not Otherwise Enumerated	11	5	....
Operating Automobile			
While Intoxicated	7	....	I
Removing Automobile			
Beyond Limits of State .....	....	1	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	Reversed
Criminal Hearings Attended, about	20	....

Respectfully submitted,

C. R. MATHIS,
State Attorney.

COUNTY SOLICITORS

REPORT OF COUNTY SOLICITOR OF DADE COUNTY, FLORIDA
FOR TWO YEARS, 1931-1932, UNDER SECTION 132, COMPILED GENERAL LAWS OF 1927

FELONIES	Acquitted by Jury	Pleaded Guilty	Nolle Prossed	Guilty by Court	Information Quashed and Announced No Information	Guilty By Jury	Directed Verdict	No Information	Dismissed By Court	Total Informations Filed
Second Degree Murder.....	2	1	....	....	....	2	....	1	....	5
Manslaughter	5	2	3	....	1	10	....	13	....	20
Assaults (Felonies)	17	4	31	....	7	9	2	10	2	68
Attempted Armed Robbery.....	2	1	5	....	....	3	....	2	....	6
201 Armed Robbery	22	14	25	1	4	20	....	13	2	82
Unarmed Robbery	4	....	3	....	....	4	....	2	1	10
Highway Robbery .....	....	....	....	....	....	....	....	....	....	1
Accessory After and Before Robbery .....	....	1	....	....	....	....	....	2	....	3
Att. Break and Enter	1	2	....	....	....	....	....	....	....	3
Breaking and Entering	29	48	59	4	11	33	....	34	1	173
Burglary	1	....	4	....	1	....	....	....	....	1
Entering Without Breaking ..	2	6	....	....	....	1	....	2	....	6
Grand Larceny	6	18	39	2	9	11	....	45	....	71
Larceny of Motor Vehicle	10	24	16	....	2	6	....	5	....	55
Larceny of Boat .....	....	....	1	....	....	....	....	....	....	1
Possessing Stolen Property	4	7	32	5	1	5	....	27	....	56
Entering With Int. to Commit a Misdemeanor .....	....	....	....	....	1	....	....	....	....	1

FELONIES	Acquitted by Jury	Pleaded Guilty	Nolle Prossed	Guilty by Court	Information Quashed and No Information	Guilty By Jury	Directed Verdict	No Information	Dismissed By Court	Total Informations Filed
Adultery .....	....	....	2	....	....	....	....	4	....	1
Bigamy .....	....	1	2	....	....	....	....	1	....	2
Desertion and Non-Support	3	11	52	7	6	4	1	20	....	87
Arson	1	1	1	1	1	1	....	....	....	6
Bribery	3	....	2	....	1	1	....	....	....	1
Exacting a Bribe .....	....	....	....	....	1	1	....	....	1	2
Crime Against Nature	3	1	2	1	4	2	....	....	....	8
Unlawful Carnal Intercourse....	....	2	5	....	....	3	1	2	....	9
Incest .....	....	....	1	....	....	....	....	....	....	2
Imputing Want of Chastity ....	....	....	1	....	....	....	....	....	....	....
Kidnapping .....	....	....	9	2	1	1	....	....	....	10
False Imprisonment .....	....	....	....	....	....	....	....	....	....	1
Forgery .....	....	11	6	1	3	2	....	4	....	21
Embezzlement	8	9	62	1	13	4	....	21	1	60
Obtaining Money or Property Under False Pretenses.....	1	4	19	....	10	4	....	32	....	31
Procuring Female for Purpose of Prostitution .....	....	1	3	....	....	1	....	....	....	7
Compounding a Felony .....	....	....	2	....	....	....	....	....	....	2
Perjury	1	1	5	....	1	1	....	2	....	8
Subordination of Perjury .....	....	....	1	....	1	1	....	....	....	1
Banking Law Violations .....	....	....	4	....	....	....	....	....	....	24
Writing Threatening Com. ....	....	1	1	....	....	....	....	....	....	2

REPORT OF COUNTY SOLICITOR OF DADE COUNTY, FLORIDA
FOR TWO YEARS, 1931-1932, UNDER SECTION 132, COMPILED GENERAL LAWS OF 1927

MISDEMEANORS	Acquitted by Jury	Pleaded Guilty	Nolle Prossed	Guilty by Court	Information Quashed	Guilty By Jury	Dismissed By Court	Announced No Information	Total Informations Filed
Assaults (Misdemeanors)	48	24	138	9	....	31	27	18	234
Petty Larceny	16	50	37	3	....	18	8	16	108
Trespass	4	11	22	1	....	1	5	18	29
Carrying Concealed Weapons	2	7	25	1	....	9	1	1	29
Reckless Driving, etc.	11	16	163	1	....	14	70	18	69
Malicious Mischief	5	....	10	1	....	....	2	2	16
Game Laws	1	19	15	1	1	1	2	11	29
Drunk, Disorderly, etc.	4	20	43	....	....	1	....	9	33
Beating Board Bill	1	4	15	3	....	2	3	3	21
Vagrancy	11	42	87	19	....	9	8	43	109
Conceal, Remove, Dispose of Property Under Lien.....	4	....	19	4	....	4	9	6	33
Op. Auto Improper License .....	....	21	242	2	1	....	4	7	32
Trans. Pass. Without Permit	1	6	69	....	....	1	1	2	8
Using Auto Without Consent of Owner	1	2	2	....	....	1	1	2	6
Selling Car Without Certificate of Title .....	....	1	5	1	....	2	....	....	5
Improper Lights .....	....	....	2	....	....	1	....	....	....
Using Trailer Without Tires ....	....	....	2	....	....	....	....	....	....
Overloaded Truck .....	....	1	1	....	....	....	....	....	....

Op. Tractor on Highway .....	....	....	4	....	....	....	....	....	....
Defacing Public Highway .....	....	....	4	....	....	....	....	....	....
Issuing Worthless Check	I	II	46	3	....	I	25	24	33
Unauthorized Sale Ry. Ticket....	....	....	....	I	....	....	....	....	I
Using Profane Language in Pub.	I	2	20	I	....	....	I	4	8
Unlawfully Op. Coin Box Tele...	....	2	2	....	....	....	....	I	7
Doing Business Without License	....	2	16	I	....	3	3	2	21
Violation Plant Act .....	....	....	....	I	....	....	....	....	I
Torturing and Unlawfully Pun- ishing Child .....	....	I	....	....	....	....	....	....	I
Indecent Exposure .....	....	I	I	I	....	....	....	I	4
Usury .....	....	I	....	....	....	....	....	....	12
Exposure of Another to Venereal Disease .....	....	....	2	....	....	....	....	....	2
Beating Way on Train .....	....	18	....	....	....	I	....	....	25
Tapping or Connecting Electric Wires	3	....	2	I	....	2	....	....	10
Selling Naturopathy Diploma ....	....	....	....	....	....	I	....	....	I
Interfering With or Resisting Officer	I	I	3	2	I	2	I	I	8
Impersonating Officer .....	....	....	....	....	....	....	I	....	....
Keeping House of Ill Fame .....	....	I	I	....	....	I	....	....	3
Inmate of House of Ill Fame	I	....	6	....	....	....	....	....	2
Cruelty to Animals .....	....	....	2	....	....	I	....	....	2
Adultery .....	....	....	2	....	....	....	....	....	....
Discharging Firearms in Public..	I	I	2	....	....	....	....	I	I
Carrying Pistol Without Permit..	I	....	3	....	....	....	....	2	....
Contrib. to Delinquency of Minor	I	....	I	....	....	2	....	....	4

[illegible]

Gambling	3	39	149	....	....	2	6	50	62
Liquor	38	207	196	14	....	30	29	109	383
Operating Slot Machine	1	....	2	....	....	....	....	....	4
Op. Small Loan Bus., No Permit .....	....	....	....	....	....	....	....	....	8
Post Adver. on Right of Way....	....	....	....	....	....	....	....	....	1
Violation Pilot Rules .....	....	....	....	....	....	....	....	....	1
Setting Fire to Woods .....	....	....	....	....	....	....	....	....	1
Stealing Fruit .....	....	....	....	....	....	....	....	....	1
Violation Traffic Law .....	....	....	....	....	....	....	....	....	2

REPORT OF COUNTY SOLICITOR, CRIMINAL COURT OF RECORD

Covering Duval County, Florida for Two Years, 1931-1932, Under
Section 132, Compiled General Laws

	Information Filed	No Bills Returned	Verdicts of Not Guilty Returned
Homicide:			
Second Degree	23	....	6
Manslaughter	17	....	1
Mayhem	7	....	1
Robbery:			
Armed	102	....	11
Unarmed	6	....	....
Assaults:			
With Intent to Commit Felony	322	....	40
Other Assaults	133	3	12
Libel and Defamation	1	....	....
Arson and Kindred Offenses	5	....	1
Burglary and Kindred Offenses	421	2	14
Larceny:			
Of Automobiles	92	....	6
Of Cattle	10	....	....
Kindred Offenses	552	4	40
Embezzlement:			
Public Officers	2	....	2
Other Kinds	61	....	4
False Pretenses and Kindred Offenses	6	....	....
Forgery, Counterfeiting and Kindred Offenses	196	....	4
Trespasses, Injuring Buildings, etc.	18	....	....
Perjury	1	....	....
Conspiracy	8	....	3
Adultery, Fornication, etc.	5	....	1
Incest	1	....	1
Bigamy	3	....	1
Violation Liquor Law	1400	....	142
Desertion and Withholding Support from Wife and Children	40	....	7
Miscellaneous Crimes Not Otherwise Enumerated:			
Usury—Small Loan Laws	139	....	10
Violation Motor Vehicle Laws	650	4	55
Common Drunkard	20	....	....
Carrying Concealed Weapons	80	....	2
Disposing of Property, etc.	55	....	6

Gambling	148	---	---
Malicious Mischief	36	3	7
Receiving Stolen Goods	45	---	5
Vagrancy	50	4	5
Profane and Obscene Language	42	5	5
Miscellaneous Petty Crimes	131	---	28
Totals	4,828	25	425

Respectfully submitted,

L. D. HOWELL,
County Solicitor.

REPORT OF COUNTY SOLICITOR

Covering Escambia County, First Judicial Circuit for Two Years, 1931-1932,
Under Section 132, Compiled General Laws

	On Informations Convictions	Verdicts of Not Guilty Returned
Homicide:		
Second Degree	3	3
Manslaughter	2	1
Mayhem	---	1
Robbery:		
Armed	5	7
Assaults:		
With Intent to Commit Felony	7	1
Other Assaults	240	30
Reckless Exhibition of Weapon	3	---
Sending Threatening Communications	2	---
Arson and Kindred Offenses	4	---
Burglary and Kindred Offenses	82	6
Larceny:		
Of Automobiles	17	1
Of Cattle	9	2
Kindred Offenses	227	36
Embezzlement	26	5
False Pretenses and Kindred Offenses	5	---
Forgery, Counterfeiting and Kindred Offenses	17	1
Trespasses, Injuring Buildings, etc.	50	4
Offenses Against Public:		
Leaving Scene of Accident	2	---
Profanity	21	4
Violation of Motor Vehicle Law	56	4
Reckless Driving	69	5
Resisting Arrest, etc.	3	1
Disposing Mortgaged Property	1	---

Adultery, Fornication, etc.	39	2
Violation Gas Tax Law	2	....
Bigamy	2	....
Aiding Escape	16	1
Driving While Drunk	28	3
Violation Liquor Law, Second Offense	49	10
Desertion and Withholding Support from Wife and Children	10	2
Miscellaneous Crimes Not Otherwise Enumerated:		
Passing Worthless Check	9	2
Being Drunk	424	2
Beating Board Bill	1	....
Gambling, etc.	57	1
Vagrancy	23	....
Train Riding	29	....
Hunting Out of Season, etc.	10	1
Doing Business Without License, etc.	3	1
Carrying Concealed Weapon	12	1
Shooting into Dwelling, etc.	3	....
Maiming Animal	6	....

Respectfully submitted,

R. H. MERRITT,
County Solicitor.

REPORT OF THE COUNTY SOLICITOR OF THE CRIMINAL COURT OF RECORD

Within and for the County of Hillsborough for the Years 1931-1932

	Verdicts and Pleas of Guilty	Verdicts of Not Guilty	Releases and Nolle Prosses	Bonds Estreated & Ab. Dock.
Breaking and Entering	178	38	43	12
Attempt to Break and Enter..	12			2
Entering Without Breaking....	13	1		1
Grand Larceny	125	29	33	9
Attempted Grand Larceny	2		1	
Petit Larceny	296	33	45	33
Larceny of Automobile	79	12	25	9
Attempted Larceny of Auto....		1	3	
Using Vehicle of Another				
Without Consent	8	1	1	....
Larceny of Cow	1	4	....	....
Receiving and Possessing				
Stolen Property	36	10	19	6
Embezzlement	24	5	15	7
Disposing Property Under				
Lien	7	3	6	4

Obtaining Money Under False

Pretenses	11	2	7	1
Confidence Game			4	
Beating Board Bill	5	1	7	3
Worthless Checks	55	2	10	17
Forgery	19	4		2
Uttering Forged Instrument..	4	1		
Bribery	1			
Usury	11	3	6	4
Rioting	15			
Unlawful Assembly	15			
Simple Assault	5	2	4	
Assault and Battery	36	8	8	11
Aggravated Assault	33	4	7	4
Assault to Kill	30	6	26	3
Manslaughter	2	1	1	
Attempted Manslaughter			1	
Murder Second Degree	1	3		
Mayhem	1			
Assault to Rape		1	1	
Assault to Rob	2			
Robbery Armed and Unarmed	49	13	10	1
Arson		5	1	1
Kidnapping			2	
Bigamy			2	
Incest			2	
Cruelty to Children	1			
Carnal Intercourse With Female Under Eighteen..		1	1	
Enticing Female for Immoral Purposes		2		
Contributing to Minor's Delinquency	2	1	1	
Unnatural and Lascivious Act	2	1	1	
Crime Against Nature				1
Cohabitation Between Races ..	2			
Imputing Want of Chastity...		1		
Abortion			3	
Desertion and Withholding Support	18	2	31	18
Liquor Law Violations	72	11	14	9
Gambling	4	8	3	11
Maiming and Killing Animals	7	4	2	
Fish Law Violations	6	3	3	2
Hunt and Game Law Violations	8		18	3
Poisoning Animal		1		
Accessory Before and After Fact	1		1	

Conspiracy		2	6	
Trespass	4	7	6	2
False Imprisonment		2		
Sale Teachers' Examination				
Questions	1			
Destroying Personal Property	10		7	
False Advertising	3	1		
Operating Business Without				
License	3	2	3	
Forfeiting Bail Bond				1
Malicious Mischief and				
Threats			1	1
Injury to Building	2		1	
Using Gas, Water, Electricity				
Without Meter	3			
Practicing Professions of				
Medicine, Dentistry,				
Ophthalmology, Podia-				
try Without License.....	7	2	3	
Election Frauds		4	6	
Beating Way on Train	193		18	
Vagrancy and Houses of				
Ill Fame	53		6	7
Affray			5	
Drunk	72	3	12	12
Profanity	20		12	4
Resisting Arrest	4	1	3	1
Exhibiting Dangerous Weapon	14	5	2	2
Carrying Concealed Weapon..	22	12	2	1
Escape and Attempted Escape	9			
Impersonating Officer	1		1	
Obstructing Justice			1	
Disturbing Public Worship	1		2	
Violations of Traffic Laws:				
Selling Autos Without				
Transfer of Title	7			
Operating Transportation				
Business Without Cer-				
tificate from Railroad				
Commission, etc.	8	3	11	2
Driving Drunk	46	7	6	11
Reckless Driving, No				
Lights, No License,				
Overloading, etc.	346	11	69	204

Respectfully submitted,

MORRIS M. GIVENS,
County Solicitor.

REPORT OF J. F. BUSTO, COUNTY SOLICITOR, CRIMINAL
COURT OF RECORD

Covering Monroe County, Florida, for Two Years, 1931-1932, Under
Section 132, Compiled General Laws

	Informa- tions Solicitor	Nol-prossed By Solicitor	Verdicts of Not Guilty Returned
Robbery:			
Armed	4	---	---
Assaults:			
With Intent to Commit Felony	7	1	1
Other Assaults	35	10	3
Arson and Kindred Offenses	4	---	---
Burglary and Kindred Offenses:			
Breaking and Entering	50	1	1
Larceny:			
Kindred Offenses (petty and grand)..	18	9	2
Embezzlement	4	2	---
False Pretenses and Kindred Offenses	9	3	2
Trespasses, Injuring Buildings, etc.	10	1	1
Offenses Against Public Revenue:			
Doing Business Without License	6	---	1
Adultery, Fornication, etc.	2	2	---
Crime Against Nature	1	1	---
Violation Liquor Law, Second Offense....	8	---	---
Desertion and Withholding Support from Wife and Children	12	2	---
Miscellaneous Crimes Not Otherwise Enumerated:			
Vagrancy	34	2	---
Gambling	3	---	---
Reckless Driving	8	4	1
Drunkenness	11	1	---
Carrying Concealed Weapons	1	---	---
Keeping House of Ill Fame	1	---	1
Passing Worthless Checks	5	---	---
Malicious Mischief	1	---	---
Profane Language	7	5	---
Driving Auto Without License	2	1	---
Forfeiture of Bail Bond	1	---	---

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Estreature Proceedings	2	1 Pending Circuit Court
Criminal Hearings Attended		
Lower Courts	100	1 Execution Issued
Other Cases Not Enumerated		
Handled by County Solicitor....	1	Extradition Granted
	Republic of Cuba	Defendant Convicted

Respectfully submitted,

J. F. BUSTO,
County Solicitor.

REPORT OF COUNTY SOLICITOR

Covering Criminal Court of Record for Orange County, for 2 Years,
1931-1932, Under Section 132, Compiled General Laws

	Informations Filed By County Solicitor	Bonds Estreated or Defendants Not Arrested or Nolle Prossed or Released On Habeas Corpus	Plea or Verdict of Guilty	Verdict of Not Guilty Returned
Homicide—2nd. Degree	1	—	1	—
Manslaughter	7	1	3	3
Robbery	7	1	6	—
Assault to Murder	25	8	14	3
Aggravated Assault	26	6	20	—
Assault and Battery	51	5	39	7
Affray	30	—	30	—
Illegal Payment of Poll Tax ..	1	—	1	—
Obscene Prints	2	—	2	—
Breaking and Entering and Entering Without Breaking to Commit a Felony or Misdemeanor	123	2	119	2
Larceny of Automobiles	9	—	9	—
Accessory After the Fact	2	—	2	—
Other Grand Larcenies	14	7	5	2
Petit Larceny	88	8	80	—
Receiving Stolen Goods	9	—	9	—
Common and Notorious Thief	1	—	1	—
Embezzlement	17	8	6	3
False Pretenses	15	—	15	—
Bribery	9	9	—	—
Forgery	17	3	11	3
Worthless Check	91	42	45	4

Trespass	15	---	11	4
Malicious Injury to Personal Property	3	1	2	---
Perjury	1	---	1	---
Blackmail	3	---	3	---
Resisting Arrest or Obstruct- ing Officer	11	---	11	---
Adultery, Fornication, Lewd and Lascivious Co-Habi- tation—Carnal Intercourse With Female Under 18 Years	25	---	23	2
Bigamy	3	1	2	---
Selling Liquor	17	3	12	2
Possession of Liquor and Still	177	36	127	14
Violation Liquor Law, 2nd. Offense	14	---	14	---
Desertion and Withholding Support from Wife and Child	17	7	8	2
Concealed Weapons and Un- lawful Exhibition deadly Weapons	32	8	22	2
Obtaining Lodging With In- tent to Defraud	11	5	6	---
Disposing of Property Under Lien	1	---	1	---
Temporary Use of Personal Property	9	2	6	1
Traffic Violations	135	20	114	1
Drunk	121	11	110	---
Open Profanity	14	---	11	3
Violation Fish and Game Law	20	---	20	---
Violation Sanitary Law	1	---	1	---
Doing Business Without Li- cense	154	37	117	---
Violation Banking Laws	4	4	---	---
Gambling or Keeping Gamb- ling Machines	43	---	42	1
Larceny of Fruit	11	---	11	---
	1387	253	1093	59

Respectfully submitted,

O. RAYMOND ELLARS,
County Solicitor.

REPORT OF COUNTY SOLICITOR

Covering Palm Beach County, Florida, for Two Years, 1931-1932,
Under Section 132, Compiled General Laws

	Informa- tions Returned By County Solicitor	No Bills Returned By Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree—Accessory to	3	---	---
Second Degree	4	2	2
Manslaughter	3	1	2
Mayhem	1	---	---
Rape (Assault to Commit)	3	1	---
Robbery:			
Armed	12	1	---
Unarmed	13	2	---
Assaults:			
With Intent to Commit Felony	47	7	3
Other Assaults	91	25	11
Burglary and Kindred Offenses	250	41	6
Larceny:			
Of Automobiles	17	3	2
Of Cattle	1	---	---
Kindred Offenses	245	72	13
Embezzlement	18	7	3
False Pretenses and Kindred Offenses	10	3	---
Forgery, Counterfeiting and Kindred Offenses	94	24	1
Perjury	1	1	---
Resisting Arrest, etc.	1	1	---
Conspiracy	3	---	---
Adultery, Fornication, etc.	15	3	---
Bigamy	2	2	---
Crime Against Nature	1	---	---
Violation Liquor Law	72	23	3
Desertion and Withholding Support from Wife and Children	16	4	---
Miscellaneous Crimes Not Otherwise Enumerated:			
Illegal Fishing, Hunting	34	9	4
Concealed Weapons	27	8	2
Reckless Driving, etc.	65	10	---
Improper Lights, License, etc.	55	12	1
Gambling and Operating Gambling House	19	7	---

Taking Turtles	3	---	---
Beating Board Bill	3	---	---
Open Profanity	4	---	---
Misc., Including Vagrancy	140	64	---

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Bond Estreature Proceedings	55	---
Criminal Hearings Attended, Inquests, etc.	75	---

Respectfully submitted,

W. E. ROEBUCK,
County Solicitor.

REPORT OF COUNTY SOLICITOR

Covering Polk County, 10th Judicial Circuit for Two Years, 1931-1932,
Under Section 132, Compiled General Laws

	Informa- tions Filed By County Solicitor	No Bills Returned By Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
Second Degree	5	---	1
Manslaughter	12	---	2
Mayhem	2	---	---
Rape, Statutory	8	---	3
Robbery:			
Armed	22	---	3
False Imprisonment and Kidnapping	5	---	1
Assaults:			
With Intent to Commit Felony	26	---	6
Other Assaults	183	---	12
Arson and Kindred Offenses	11	---	4
Burglary and Kindred Offenses	161	---	7
Larceny:			
Of Automobiles	26	---	2
Kindred Offenses	317	---	19
Embezzlement	45	---	4
False Pretenses and Kindred Offenses	11	---	1
Forgery, Counterfeiting and Kindred Offenses	36	---	1
Trespasses, Injuring Buildings, etc.	30	---	3
Perjury	3	---	1
Impersonating of Officer	2	---	1

Resisting Arrest, etc.	2	....	....
Adultery, Fornication, etc.	21	....	2
Incest	1	....	....
Bigamy	1	....	....
Crime Against Nature	2	....	....
Violation Liquor Law	279	....	30
Desertion and Withholding Support from Wife and Children	27	....	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Worthless Checks	51	....	1
Violation Game Laws	34	....	2
Pistol	34	....	1
Drunkenness	310	....	11
Operating Game of Chance (Bolita)	65	....	6
Traffic Violations	84	....	7
Vagrancy	88	....	....
Destroying Property of Another	7	....	....
Violation of Citrus Laws	19	....	....
Gambling	123	....	14
Violation of Drug Act	5	....	14

Respectfully submitted,

MANUEL M. GLOVER,
County Solicitor.

REPORT OF COUNTY SOLICITOR

Covering Volusia County, Criminal Court of Record, for Two Years,
1931-1932, Under Section 132, Compiled General Laws

	Informa- tions Filed	No Bills Returned By Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
Second Degree	3	....	1
Manslaughter	3	....	1
Robbery:			
Armed	9	....	1
Assaults:			
With Intent to Commit Felony	31	....	5
Other Assaults	145	....	5
Libel and Defamation	3	....	....
Arson and Kindred Offenses	13	....	2
Larceny:			
Of Automobiles	13	....	2
Of Cattle	4	....	3
Kindred Offenses	16	....	3

Embezzlement :

Public Officers	3	....	....
Other Kinds	16	....	2
False Pretenses and Kindred Offenses	35	....	....
Forgery, Counterfeiting and Kindred Offenses	17	....	2
Trespasses, Injuring Buildings, etc.	33	....	2
Perjury	4	....	....
Resisting Arrest, etc.	6	....	....
Conspiracy	6	....	....
Adultery, Fornication, etc.	7	....	....
Bigamy	2	....	....
Violation Liq. Law (inc. intoxication)....	120	....	3
Desertion and Withholding Support from Wife and Children	13	....	2

Miscellaneous Crimes Not Otherwise

Enumerated :

Petit Larceny	110	....	3
Grand Larceny	60	....	2
Breaking and Entering With Intent to Commit a Misdemeanor	74	....	2
Breaking and Entering With Intent to Commit a Felony	50	....	2
Removing Property Under Lien	5	....	....
Violation of Motor Vehicle Law	75	....	2
Carrying Concealed Weapon and Kindred Offenses	29	....	3
Maliciously Cutting Fence	1	....	....
Receiving Stolen Goods	14	....	2
Gambling and Kindred Offenses	11	....	....
Vagrancy	26	....	....
Unlawful Gathering of Oysters	1	....	....
Temporary Use of Personal Property..	5	....	....
Operation of Motor Vehicle While Intoxicated	17	....	....
Falsely Impersonating Officer	1	....	....
Open Profanity	16	....	....
Violation of Fish and Game Law	23	....	....
Beating Way on Railroad Train	30	....	....
Disturbing Religious Assembly	2	....	....
Peddling Without License	3	....	....
Setting Fire to Woods	1	....	1
Indecent Exposure	1	....	....
Cruel Punishment of Child	1	....	....

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Criminal Hearings Attended or Held	329....	} Inf. Filed—247 Discharged for Lack of Evidence—82
Habeas Corpus Hearings Attended		

Note: The Criminal Court of Record of Volusia County held its first term July 6, 1931.

Respectfully submitted,

HERBERT B. FREDERICK,
County Solicitor.

XV.

OFFICIAL OPINIONS

The following are a few of the opinions rendered by this office to the Governor and his cabinet during the years 1931 and 1932, which may be of interest to the public generally:

GOVERNOR

HON. DOYLE E. CARLTON

RESIGNATION—HON. FRED H. DAVIS, ATTORNEY-GENERAL

March 5, 1931.

My Dear Governor:

Having been appointed by you as a Justice of the Supreme Court of Florida to succeed Hon. Louis W. Strum, who has resigned to accept the office of United States District Judge for the Southern District of Florida, I hereby tender to you my resignation as Attorney General to accept the office to which I have been appointed.

I respectfully request that my commission as Judge be dated so as to take effect Monday, March 9th, 1931, in order that I may conclude an important case for the State set for hearing in the Federal Court at Atlanta, Georgia, on Saturday next, which case because of its embracing a voluminous record of over a thousand printed pages could not be adequately prepared by my successor in the limited time left for that purpose before the hearing.

May I express to you my deepest and most sincere appreciation for the great honor you have conferred upon me in naming me as a Justice on the Florida Supreme Court, and pledge to you earnest endeavor to demonstrate by faithful service that your confidence in me has not been misplaced.

I leave the office of Attorney General not without regret at severing the cordial relations I have had in the past with you, as Governor, and the other members of your official family in the Capitol, and wish to emphasize that I take with me lasting recollections of the many courtesies which have been extended to me as Attorney General, of which I am deeply appreciative.

Sincerely and respectfully,

FRED H. DAVIS,
Attorney General.

COUNTY BUILDINGS, ROADS AND BRIDGES—DUTY OF COUNTY COMMISSIONERS AND STATE BOARD OF HEALTH

April 2, 1931.

My Dear Mr. Huskisson, Sec'y:

Replying to your favor of the 31st ultimo and returning you the file herewith, I beg to advise that Section 5 of Article VIII of the Constitution provides that the powers and duties of the County Commissioners shall be prescribed by law. Section 2153 of the Florida Compiled Laws of 1927 among various other powers given to the County Commissioners clothe them with the power "to build and keep in repair county buildings, roads and bridges."

Section 3160 of the Compiled Laws of Florida 1927 gives to the State Board of Health power to make, adopt, promulgate and enforce rules and regulations requiring and providing for the thorough sanitation and disinfection of various buildings and specifically enumerate *jails*, and further on the same Act gives them the power "to supervise and regulate municipal and county sanitation and to make separate orders and rules to meet any emergency not provided for by general rules and regulations for the purpose of suppressing nuisances, etc."

Section 3163 of the Compiled Laws of Florida 1927 gives the State Health Officer the right "to condemn in any of the cities and towns any sidewalks, paving, buildings, etc., that in his judgment shall be likely to produce or cause the spread of epidemic disease."

I find no power resting in the Governor or Mr. Mayo as Commissioner of Agriculture to condemn a county jail. It is the statutory duty, see Section 3163 of the Compiled Laws of Florida, of the State Health Officer, between the first of November and the first of May of each and every year if deemed necessary by the Board to visit all of the cities and towns, etc., for the purpose of looking into the question of sanitation, etc., and, therefore, it is my opinion, that this matter will have to be worked out through the State Board of Health. As a practical solution it occurs to me that it might be wise for the Governor to take the matter up with the Board of County Commissioners who have control of the public buildings of the county and also through the State Board of Health. The State Board of Health, in my opinion, have the statutory authority to bring about relief in a situation of this kind.

Yours very sincerely,

CARY D. LANDIS,
Attorney General.

CONSTITUTION—CONSTRUCTION SEC. II. ART IX.

May 21, 1931.

My Dear Governor:

Replying to yours of the 19th instant and returning you the enclosures which came with your letter, I beg to advise that I have carefully examined the letter from the Honorable E. J. L'Engle and I note his comment on the last sentence of Section II of Article IX of the Constitution which was adopted in November, 1930.

The important question is whether or not inasmuch as the word *Article* is used in the last sentence of the amendment which was submitted to the people would be construed to carry an application of this last sentence of the amendment to the entire substance of the whole Article IX.

If the word *Article* were to be so construed as to be applicable to all of the Sections of this Article, and especially to Sections 2 and 5 of Article IX, I am satisfied that this would then give an adequate basis for a complete change in the ruling in the case of *Amos vs. Mathews*, however, it is my thought that the Court would not construe the word *Article* with such great liberality as this. When we consider the joint resolution that was enacted in 1929, by virtue of which the same was submitted to the vote of the people of the State, the title of the resolution, it seems to me, clearly would limit the meaning of the word *Article* to the Eleventh Section of Article IX and not to the entire article.

Further, when this was submitted to the people to vote upon, it seems to me that the clearer reasoning would be that the people felt that they were simply voting upon Section Eleven alone, and that the word *Article* as used in that Section Eleven, which would be the only thing that was before the voter, would be applicable to that section alone.

I am further of the opinion that with reference to the Joint Resolution now before the houses proposing an amendment to Section Eleven authorizing an income tax, if it did carry this same language, it would be applicable only to the Section and would not enlarge the powers of the Legislature with reference to the entire article, which article covers the entire scope of the taxing power.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DEMOCRATIC EXECUTIVE COMMITTEE—STATE METHOD OF
FILLING VACANCY

October 14, 1931.

Dear Governor:

Replying to your letter of the 7th instant with reference to a vacancy on the State Democratic Executive Committee, permit me to respectfully call attention to Section 7 of Chapter 6469, Acts of 1913, as amended by Section 3 of Chapter 13761, Acts of 1929, appearing as Section 361 of the

1930 Supplement to the Compiled General Laws of Florida, providing that in event of a vacancy occurring from any cause in the State executive committee of a political party, the only provision for filling such vacancy prior to the next primary election is by the county executive committee of the county so without representation.

I beg to return the files submitted with your letter.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COMMISSION—REGULAR FEE REQUIRED

April 12th, 1932.

My Dear Governor:

Returning you herewith the papers pertaining to commission sought by one S. A. Jones, I beg to advise that while it appears that this commission is in theory an honorary one, yet the Act prescribing a fee on all Commissions issued by the Governor, attested by the Secretary of State, and bearing the seal of the State of Florida makes no exception whatever with reference to the payment of the fee of \$10.00.

It is my opinion, therefore, that should you issue a Commission to Mr. Jones that he should pay the regular fee as required by Chapter 14669 of the Acts of 1931.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BOARD OF BOND TRUSTEES—GOVERNOR NOT AUTHORIZED TO FILL VACANCY BY APPOINTING MEMBER

April 27th, 1932.

My Dear Governor:

I beg to return you herewith letter from S. T. Dowling, Clerk of the Board of Bond Trustees of Union County, Florida, as well as letter from Hon. R. A. Gray, Secretary of State, to the Hon. S. T. Dowling. The question raised is as to whether or not you as Governor of Florida should appoint some one to fill the vacancy in the Board of Bond Trustees of Union County, Florida, caused by the death of a former member.

Article IV, Section 7 of the Constitution of the State of Florida is as follows:

"Section 7. When any office from any cause shall become vacant and no mode is provided by the Constitution or by the Laws of the State for filling such vacancy, the Governor shall have the power to fill such vacancy by granting a Commission for the unexpired term."

It will be seen that before the Governor will have the power to fill the vacancy in question, it would be necessary that no mode be provided by the Constitution or *by the laws of the State* for filling such vacancy.

The law creating the Board of Bond Trustees of Union County is Chapter 11259, Acts of 1925, and this law does provide how a vacancy shall be filled. The portion of Section 2 of said chapter referring to this matter is as follows:

"Any vacancy occurring in said Board of Bond Trustees shall be filled by the remaining members of said Board selecting some person who is a qualified elector and free-holder residing in said county and in the County Commissioner's District in which the vacancy occurred."

It will thus be seen that the law does provide a mode by which this vacancy shall be filled, and under the Constitutional provision above set forth, it is my opinion, that you have no authority as Governor to make this appointment. The remaining members of the Board should select a qualified elector as provided by the law who should then file bond in such sum as may be designated by the Board of County Commissioners and take the usual official oath, and when this is done and presented to you, he is then entitled to be commissioned by you as Governor as any and all other county officers are authorized to be commissioned.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

GASOLINE—NOT EXEMPT FROM TAXATION WHEN USED FOR
PURPOSE OF IRRIGATING AND OPERATING TRACTORS ON
ORANGE GROVES

April 29th, 1932.

Dear Mr. Huskisson, Sec'y:

This refers to your favor of the 28th instant, in which you quote from a letter to you from one Mr. Paul Vance, who desires to have the gasoline he uses exempt from the payment of the 7c gasoline tax, for the reason, as I take it, that he is using the gasoline in irrigating and operating tractors on his grove.

There is no such exemption to the gasoline tax, and there is no way he can avoid paying this tax. It might be a good argument to the Legislature that gasoline used in connection with the operation of groves and other agricultural pursuits should be exempt, but so far, the Legislature has not done so.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

STATUTE OF LIMITATION—TWO YEARS IN CERTAIN CASES

April 12, 1932.

My Dear Governor:

The statute of limitations against all criminal offenses except offenses punishable by death is two years. In other words, in all except capital offenses, the prosecution must be commenced within two years from the date of the offense, and if not so commenced, it is barred by the statute of limitations.

Robbery is a felony and is prosecuted on indictment in counties that do not have a court of record or criminal court of record. St. Johns County has no criminal court of record, and unless an indictment was returned within two years from the date of the alleged robbery as detailed in the letter of Mrs. John McGarvey of 25004 N. 18th Street, Philadelphia, Pennsylvania, of the 5th instant, the same was barred by statute of limitation, and the fact that a warrant was issued does not keep it alive.

I am returning the letter of Mrs. McGarvey herewith.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX BOOKS—GOVERNOR NOT AUTHORIZED TO EXTEND TIME
FOR CLOSING

April 12, 1932.

My Dear Governor:

Replying to your letter of the 8th instant, I beg to advise that there is no law authorizing you as Governor to extend the time for closing the tax books. The Legislature fixed the time for opening and closing the books, and there is no authority in law for changing the time so fixed.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INSPECTORS, MARKS AND BRANDS—APPOINTMENT AND
REMOVAL

July 14, 1932.

My Dear Governor:

Pursuant to your request I have examined communication to you under date of the 8th instant from the Honorable B. A. Bales, County Attorney of Glades County, with further reference to cattle inspectors and inspectors of marks and brands in Glades County.

In my letter to you under date of May 31, 1932, on the same subject, I stated that it appeared in the last paragraph of the resolution of the County Commissioners that the county had already been subdivided into cattle districts under the provisions of Section 6949, Compiled General Laws of 1927; that officers were already holding commissions under such action and appointment; and that no statutory authority had been found for re-districting the county.

In the above mentioned letter, Mr. Bales stated that there had been no previous districting of the county into cattle districts, and that the officers now holding commissions were inspectors of marks and brands appointed under Section 6960, and were not cattle inspectors appointed under Section 6949. The files in the office of the Secretary of State also indicate the appointment of the present officers as inspectors of marks and brands.

In view of the above, it appears that you would be authorized to appoint cattle inspectors in Glades County under the provisions of Section 6949, but the statutory duties of such officers do not include the inspection of slaughtered animals.

With reference to rescinding or cancelling commissions of inspectors of marks and brands previously appointed, I beg to say that in my opinion Section 1 of Chapter 15227, Special Laws of 1931, would not be sufficient authority therefor, but such removals may be for cause only as prescribed by Section 15, Article IX, of the State Constitution.

Very respectfully submitted,

CARY D. LANDIS,
Attorney General.

SURETY BOND—COUNTY JUDGE

July 28, 1932.

My Dear Governor:

I have before me a letter under date of July 25th from the Honorable William Fisher of Pensacola, relative to the surety bond of the late County Judge, Robert P. Stout, which you referred to me for such advice as I may think proper.

I note that Mr. Fisher states that under Judge Stout's will, certain of his insurance policies and other estate assets were impressed with a trust for the payment of the obligations which constitute the basis of your claim under the terms of the surety bond against the Union Indemnity Company and that Mr. Fisher suggests that you file a claim in the probate court of Escambia County against the estate of Robert P. Stout.

I am informed by Mr. Huskisson, your Secretary, that at this time the deficit in Judge Stout's accounts, for which the bond company may be liable, has not been definitely determined, and that the State Auditor has been instructed to make an audit of the accounts with a view to ascertaining the amount of the deficit and to furnishing proof of the claim.

The object in requiring bonds from public officers is to indemnify the government against loss of public funds, and to obviate the delay in the

settlement of claims of this nature. Therefore, it is my opinion that just as soon as the State Auditor has ascertained the full amount due by Judge Stout and has furnished tangible proof of such amount, this should be filed with the Union Indemnity Company and demand made upon the said company for payment of the amount due under the terms of the bond.

If the deficit in Judge Stout's accounts amounts to more than the amount recoverable under the bond, then it might be advisable to file a claim against the Stout estate for the balance due.

Respectfully submitted

CARY D. LANDIS,
Attorney General.

REFUNDING BONDS—APPROVAL BOARD OF ADMINISTRATION NOT NECESSARY

September 29, 1932.

My Dear Governor:

At your request for an opinion in the matter of the issuance of refunding bonds, I have the honor to advise that there is now no provision of law requiring the approval by the Board of Administration of the issuance of refunding bonds by counties or special taxing districts. The Board of Administration is merely a fiscal agent created by law for the purpose of receiving and paying out funds coming into its hands for the payment of certain bonded indebtedness of the several counties and special taxing districts of the State.

The Act creating the Board of Administration required its approval as to certain matters connected with the issuance of refunding bonds by the counties and districts, the funds for the payment of which are handled by the board, but by the provisions of Chapter 15772, Laws of Florida, Acts of 1931, it is provided that said Act constitutes full authority for the issuance of refunding bonds by the governing body of the bonding unit, and that no proceedings, publications, notices, consents or approval shall be required for the doing of the things in said act authorized except as therein prescribed and required, and there is no requirement in said act for the approval of the Board of Administration in the matter of issuing such refunding bonds.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LOAN—STATE NOT AUTHORIZED TO SPONSOR

October 27, 1932.

Dear Mr. Huskisson:

Replying to your letter of the 22nd instant, with reference to the authority of the State to sponsor a loan from the Reconstruction Finance Corporation for the purpose of erecting a student union building at the Uni-

versity of Florida, I beg to advise that Section 10 of Article IX of the Constitution prohibits the credit of the State being pledged or loaned to any individual, company, corporation, or association. Sponsor means to be bound for another's default or to become surety for the obligation of another. Therefore, for the State to sponsor a loan for the proposed purpose would be in violation of Section 10 of Article IX of the Constitution.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SECRETARY OF STATE
HON. R. A. GRAY

NATIONAL BANKS—AUTHORIZED TO ISSUE LIMITED PERMIT
TO DO BUSINESS IN STATE

January 7, 1931.

Dear Mr. Gray:

This answers your letter of January 5th in which you request my opinion as to whether or not the Secretary of State may issue a permit to a national bank as a body corporate granting such bank the limited privilege of acquiring and dealing in real estate within the State of Florida, so as to comply with the Florida corporation laws which require foreign corporations to file a certified copy of their charter with the Secretary of State and to obtain a permit from the Secretary of State to transact business in Florida, or to acquire, hold or convey real estate.

In my opinion you have authority to accept for filing in your office certified copies of charters of national banks for the purpose of showing the authority of such banks to acquire, hold and dispose of real estate in this State, and you are also authorized to issue to such banks a limited permit to acquire, hold and dispose of real estate in Florida under the charter so filed with you. Permits issued under the foregoing circumstances will of course be limited in character.

Yours very truly,

FRED H. DAVIS,
Attorney General.

FOREIGN CORPORATION—METHOD OF COMPUTING CHARTER
TAX UNDER CHAPTER 13640, ACT OF 1929

March 2, 1931.

Dear Mr. Gray:

Under Section 4096, Revised General Statutes, Section 6027, Compiled General Laws, as amended by Section 1 of Chapter 13640, Acts of 1929, it is provided that in every case where application is made to the Secretary of State for the issuance of a permit allowing a foreign corporation to transact business in this State, the Secretary of State shall demand

and receive from the applicant for the use of the State a fee calculated upon the basis of the total authorized capital stock of the corporation as shown by its charter.

Prima facie, therefore, the Secretary of State should in every case demand of the applicant the payment of a charter fee upon the *total authorized capital stock shown by the charter*. However, the statute contains a further provision to the effect that if the applicant contends and submits satisfactory evidence to prove that the amount of capital "as distinguished from capital stock" to be employed in Florida is less than the total amount of *authorized capital stock shown by the charter* that in such last mentioned event, instead of collecting a tax upon the full amount of authorized capital stock shown by the charter, the Secretary of State will be permitted to collect a less amount based not upon capital stock at all, but upon the amount of capital employed or to be employed by the foreign corporation in transacting business in Florida. But in every case the prima facie liability is for a tax upon the full amount of authorized capital stock shown by the charter. Only where the capital to be employed in the State, as distinguished from the amount of authorized capital stock of the corporation, is less than such total authorized amount of capital stock is the corporation permitted to claim a reduction in the amount of the charter tax.

In the case of the Firestone Realty Corporation referred to in your request for my opinion, it appears that the total number of shares of stock authorized by the charter is five thousand shares of no par value. The Secretary of State should demand a charter tax based upon five thousand shares of authorized capital stock as shown by the charter, unless the corporation contends that the amount of capital to be employed in Florida, when used as a basis for calculation of the tax will result in the less tax than would be computed and collected on the total authorized capital stock.

In the event that the tax computed upon the capital to be employed in Florida results in a charter tax which would be less than a charter tax collected on the whole five thousand shares of no par value stock then the corporation is entitled to the benefit of the lower rate of fee.

There is no ground under the law for adopting the construction contended for by the Legal Department of the Firestone Realty Company as shown by the letter of counsel for the department, dated February 25th.

Trusting this explains the matter, I am

Yours very truly,

FRED H. DAVIS,
Attorney General.

TAX COLLECTORS—METHOD OF INCREASING OR DECREASING BONDS

February 10, 1931.

Dear Mr. Gray:

This is in answer to your request of February 9th for my opinion as to the method of increasing or decreasing the bonds of tax collections, and whether or not same is permissible.

In my judgment the county commissioners of the county have the authority with the consent of the Comptroller to permit the tax collector to file a bond in a less amount than that which was originally prescribed for his office. In order to bring this to pass the county commissioners should pass a resolution reciting the fact that the public interest justifies a reduction in the amount of bond for the tax collector, and fixing a new amount of bond for him to give. The tax collector should then either send in a bond in the amount fixed in the resolution duly approved by the county commissioners, and thereafter approved by the Comptroller, or should obtain from the county commissioners and the Comptroller their approval of a "rider" to the old bond, reducing the amount thereof pursuant to the resolution passed by the board of county commissioners.

County officials are required to give bond for the entire term for which they qualify. Only by the substitution of a new bond under proper authority and with proper approval or the equivalent thereof, can the original obligation embraced in the original bond be terminated.

Trusting this explains the matter, I am

Yours very truly,

FRED H. DAVIS,
Attorney General.

CORPORATIONS—S. B. 734, CHAP. 14677, NOT IN CONFLICT WITH
SEC. 4268, C. G. L.

June 5th, 1931.

My Dear Mr. Grey:

Replying to your favor of June 4th, 1931, in which you request my opinion as to whether or not Section 4268 of the Compiled General Laws of 1927 has been repealed by Senate Bill No. 734, I beg to advise that it is my opinion that Senate Bill No. 734 does not supersede Section 4268 of the Compiled General Laws of 1927.

Sections 4257, 4259 and 4268 of the Compiled General Laws have to do mainly with the question of the service of process, while Senate Bill No. 734 is largely a revenue measure. While in some respects there is a duplication of reports required, yet it is clearly my opinion that Senate Bill No. 734 is not in conflict with the Sections of the Compiled Laws above referred to and, therefore, does not repeal them.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—UNDER S. B. 734, CHAP. 14677, CERTAIN TAX
REQUIRED

Sept. 3rd, 1931.

Dear Mr. Gray:

This refers to your favor of August 21st, in which you request my opinion as to whether or not a corporation with par value shares should pay the tax imposed by Senate Bill No. 734 on the face value of the outstanding shares, or if the true value of same may be shown as in the case of no par value shares.

It is my opinion that under Senate Bill No. 734 that each corporation with par value shares should pay the tax imposed upon the face or par value of these shares, that is, on all shares of stock that are outstanding. The only exception to this rule would be in the case of no par value shares, which is provided for by Section 5 of the Act.

Very respectfully,

CARY D. LANDIS,
Attorney General.CORPORATIONS—NOT AUTHORIZED UNDER LAW TO HAVE
TWO SEPARATE NAMES

September 17, 1931.

Dear Mr. Gray:

I have your letter of the 16th instant submitting file from Mr. Herbert U. Feibelman of Miami, Florida, relative to filing certificate of amendment to the charter of above subject, and asking to be advised whether you should file the amendment giving the corporation authority to use two different names.

Corporations are creatures of statutory authority, one of the requisites of which is that they shall each have a name, and this must be set forth in the proposed charter. After a charter is granted to a corporation, there is authority for changing the name by a proper resolution, and when this is done and such resolution is certified to, the Secretary of State under the common seal of the corporation, letters patent shall issue reciting the change of name, which letters patent shall be recorded as provided in case of other amendments.

There is no authority in law, however, for a corporation to take a second name, and at the same time retain the name originally adopted, as this would not be a change of name as authorized by the statute. There is no authority under the statute for a corporation to have two separate and distinct names.

I am returning files submitted with your letter.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—WHEN EACH IS A SEPARATE CORPORATE ENTITY, EACH REQUIRED TO PAY FILING FEES

September 18, 1931.

My Dear Mr. Gray:

This refers to your favor of the 18th instant, in which you request my opinion as to whether or not where Corporation "A" owns all of the capital stock of its subsidiary, Corporation "B", each such corporation should pay the corporation tax.

It is my opinion that each corporation is a separate corporate entity and each corporation will be required to pay the filing fees, as set forth in the act.

It is my opinion that insofar as capital stock that has a par value is concerned that the capital stock which is issued, represents the invested capital; and that in the problem which you give, both corporations will be required, under the terms of the law, to pay the filing fees as set forth in the act.

Very respectfully,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—CERTAIN DEDUCTIONS IN FILING FEES ALLOWED

October 16, 1931.

My Dear Mr. Gray:

Replying to your request for an opinion as to whether corporations organized under the laws of Florida which employs all or a material part of its capital in other states shall be allowed the same deductions that are allowed foreign corporations employing only a part of their capital in this State, it is my opinion that a liberal construction of the Act would perhaps allow such deduction.

In the preamble of the Act is a recital that in carrying out the requirements of the Act, the expenses thereof would be a reasonable charge against the exercise of corporate privileges enjoyed by corporations authorized to do business in Florida. It might be construed that the privileges enjoyed, for which the filing fee is required, may be determined by the capital stock allocated by the corporation for use in the State of Florida. There is specific provision in the Act applicable to foreign corporations that the amount of the fee is based on the amount of the capital stock allocated for use in the State, and there is no reason why the rule should not apply to domestic corporations. This construction would be fair to both foreign and domestic corporations alike, and it cannot be presumed that the Legislature intended to discriminate against corporations organized under the laws of Florida.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—SECTION 11 OF CHAP. 14677 REFERS TO FEES
TO BE PAID IN CONNECTION WITH REPORT
REQUIRED BY SEC. 1

October 16, 1931.

Dear Mr. Gray:

I note in your letter of the 12th instant that Mr. C. W. Lawrence, Jr., of Tampa, takes the position that Section 11 of Senate Bill No. 734, Acts of 1931,

"Any Corporation paying the maximum fee herein provided for shall not be required to file any reports whatsoever as required by the provisions of this Act,"

refers to the amount a corporation would be due to pay, considering its outstanding capital and the schedule of fees.

Section 11 of the Act refers only to the fee required to be paid under the provisions of said Act by corporations with capital stock over two million dollars. This, of course, refers to the filing fee to be paid in connection with the report required by Section 1 of said Act, and not otherwise.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—ADMINISTRATIVE OFFICER NOT
AUTHORIZED TO REFUSE TO FILE DOCUMENT BECAUSE
OF OMISSION THEREFROM OF SUCH STAMPS

December 4, 1931.

Dear Mr. Gray:

Replying to your favor of the 19th ultimo, with which you have submitted copy of agreement of conditional sale tendered to you for filing in the office of the Secretary of State by the attorneys representing a corporation in the hands of a Federal Receiver, and in which you ask to be advised if said agreement of conditional sale should have the documentary stamps attached thereto, permit me to say we do not find that the statute makes it the duty of an administrative officer to refuse to file a document because the documentary stamps have been omitted therefrom.

Therefore, without passing upon the question of whether or not this particular document requires stamps under the documentary stamp tax Act, it is my opinion that it is your duty to accept it, regardless of whether the stamps have been placed thereon or not.

We are returning herewith copy of the agreement. Also copy of the opinion submitted by counsel representing the corporation.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CO-OPERATIVE ASSOCIATIONS—AUTHORIZED TO TRANSACT
BUSINESS UNDER CHAPTER 7384, ACTS OF 1917

February 17, 1932.

Dear Mr. Gray:

I have read the proposed articles of incorporation of "Merchants' Co-operative Association, Inc., submitted with your letter of the 16th instant, and in reply to your request for advice as to what Act the same comes under, I respectfully refer you to Chapter 7384, Laws of Florida, Acts of 1917, being Sections 6385 to 6390 inclusive, of the Compiled General Laws of Florida, 1927.

This Act permits any number of persons not less than ten to be associated and incorporated for the co-operative transaction of any lawful business, and contemplates the issuance of capital stock.

This Act appears never to have been amended or repealed, either directly or by implication.

The fees for the incorporation of such co-operative associations are the same as those provided for like capitalization of general corporations in the State.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PRIMARY ELECTION—IN RE FILING STATEMENTS CAMPAIGN
EXPENSES AND LAST DAY FOR QUALIFYING

March 3, 1932.

Dear Mr. Gray:

Replying to your favor of the 29th ultimo, in which you request my advice with reference to the dates on which, before which, or between which, candidates for office in the primary elections may file or should file statements of campaign expenses, and also the last day on which a candidate can qualify for office with the Secretary of State in the coming primary, permit me to say:

Section 4 of Chapter 13761, Acts of 1929, requires each candidate for nomination for office to be voted for by the electors of more than one county, to file a sworn statement and receipt for committee assessment, if any has been levied, and pay to the proper committee, and pay his filing fee as therein required, to the Secretary of State, not less than 30 days previous to the day of the first primary election, provided that any candidate may pay such assessment as has been levied by the committee to the Secretary of State, who is authorized to accept the same and remit to the appropriate committee entitled thereto.

Therefore, midnight of May 8th would be the latest date a candidate could qualify for a State office. However, inasmuch as May 8th falls on Sunday, and Sunday is a legal holiday, if a candidate presents his qualifica-

tion papers on Monday, May 9th, you as Secretary of State should accept the same.

Section 5 of Chapter 13761, Acts of 1929, requires each candidate for nomination for an office to be voted for wholly within a single county, to file a sworn statement and receipt for committee assessment, if any has been levied, with, and pay his filing fee as therein required, to the Clerk of the Circuit Court, who shall receive the same in his capacity as Clerk of the Board of County Commissioners of said county, not less than 25 days previous to the day of the primary election. Therefore, midnight of May 13, 1932, would be the latest date a candidate could qualify for a county office.

Section 15 of Chapter 13761, Acts of 1929, requires each and every candidate for nomination in the primary election, to file in the office of the Clerk of the Circuit Court of the county in which he resides, if he is a candidate for State Senate, Representative in the Legislature, or for any county office or position, or in the office of the Secretary of State, if he is a candidate for a national or State office or position, detailed itemized statements of his campaign expenses, not more than 30 days nor less than 25 days prior to the first primary election. Also not more than 12 nor less than eight days prior to the first primary election, and within 10 days after the second primary election. Therefore, this year May 8th would be the earliest date for the filing of the first statement, and midnight of May 13th would be the latest date. The fact that Sunday is a legal holiday should be taken into consideration in connection with the filing of the expense statements referred to, since May 8th falls on Sunday.

May 26th would be the earliest date and midnight of May 30th would be the latest date for filing the second statement.

The statute requires the last statement to be filed within ten days after the second primary election. The last day upon which the final statement after the second primary election, could be filed, would be midnight of July 8th.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAXES—STATE OFFICIALS NOT AUTHORIZED TO ACCEPT PAY-
MENT UNDER PROTEST

March 7, 1932.

Dear Mr. Gray:

This refers to your favor of March 2nd, in which you make inquiry as to whether or not there is any duty upon State officials collecting taxes to accept tax payments under protest.

In reply, I would state that it is your duty not to accept any tax payments under protest. You are required under the law, as are all State officials collecting taxes, to pay the same into the State Treasury promptly.

If anyone feels aggrieved or think they should not pay their taxes, they have their remedy under the law, but you are not as a State official, under the law, authorized at any time to accept tax payments under protest.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CANDIDATES—IN RE QUALIFICATION, AND CERTIFYING
NAMES FOR CIRCUIT JUDGES OR STATE ATTORNEYS
IN CERTAIN CASES

March 8, 1932.

Dear Mr. Gray:

I am in receipt of your letter of the 5th instant, making inquiry as to your duty in the matter of accepting qualification of candidates and certifying their names for circuit judgeship or state attorneyship, where the incumbents are holding under an ad interim appointment, but the term of office does not expire until following the primaries of 1934, and in fact expires in 1935.

You call attention to Section 389, Compiled General Laws, which provides for the State Executive Committee of any political party by resolution to declare for the nomination of candidates for other than elective offices, to serve the Secretary of State with a certified copy thereof, and requires the names of candidates for such offices and positions to appear upon the official election ballot.

You also quote two certain paragraphs from a certified copy of a resolution by the State Democratic Executive Committee, which declares for the nomination in the primary of certain appointive offices, which two paragraphs quoted are as follows:

"Judges of the Circuit Courts of the State of Florida whose terms of office expire prior to the first Democratic Primary in the year 1934.

State's Attorneys of the State of Florida whose terms of office expire prior to the first Democratic Primary in the year 1934."

In the Advisory Opinions of the Supreme Court to the Governor in 113 So 115 and 136 So 623, we find this language:

"When a vacancy occurs in the office of a Circuit Judge during a recess of the Senate the Governor fills the vacancy by appointment to hold no longer than the end of the next ensuing session of the Senate, and when the Senate convenes in session it is the duty of the Governor to submit appointees to fill such vacancies to the Senate for confirmation for the unexpired term."

In the Advisory Opinion of the Supreme Court to the Governor in 134 So 595, we find this language:

"When the Legislature is not in session and a judge of a Criminal Court of Record is appointed and commissioned without a confirmation by the Senate, the legal term of such appointee is 'until the end of the next ensuing session of the Senate unless an appointment be sooner made and confirmed and consented to by the Senate. Section 464 (399), Compiled General Laws 1927. If a vacancy in such office occurs during a term, and a successor is appointed by the Governor and confirmed by the Senate, he holds to the end of the term; and, where a vacancy occurs when the end of the term is prior to the next ensuing session of the Senate, 'the Governor shall have the power to fill such vacancy by granting a commission for the unexpired term.' Section 7, Article 4, Constitution."

In the same Advisory Opinion, we find this language:

"Upon the election or appointment of an officer, a commission is issued to him which is evidence of his right to hold the office: but, if the term of the officer as stated in the commission is not in accord with the term as fixed by the applicable law, the term of the officer is governed by the law, not the commission."

From the above citations it is clear that a recess appointment may extend only to the end of the next session of the Legislature, but an appointment during the session of the Legislature confirmed by the Senate, may extend to the end of the statutory term of office.

In construing the above quoted paragraphs from the resolution of the State Democratic Executive Committee, it becomes necessary to construe the words "whose terms of office." In my opinion the words so used in the paragraphs quoted, have reference to the terms for which the officers may legally be appointed under the above quoted decisions of the Supreme Court and not necessarily to the full term of office as prescribed in the statutes.

If the appointment is during the session of the Legislature and is for the remainder the statutory term of office, and is confirmed by the Senate, and such statutory term of office extends beyond the Democratic primary in the year 1934, it is my opinion that you would not have authority under the above quoted paragraphs of the committee resolution to accept qualification of candidates and certify their names for circuit judgeship or State attorneyship. If, however, the appointment is a recess appointment, it could legally extend only to the end of the next session of the Legislature, and the term of office of such appointee is for such period and not for the full statutory term of such office. Therefore, it is my opinion that in such last mentioned case it becomes your duty to accept qualification of candidates and to certify their names for circuit judgeship or state attorneyship, without regard to when the statutory term of such offices may expire.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PRESIDENTIAL ELECTORS—FLORIDA ENTITLED TO SEVEN

March 30, 1932.

Dear Mr. Gray:

I am in receipt of your letter of the 23rd instant, making inquiry as to the number of electors for President and Vice-President of the United States the State of Florida will be entitled to at the general election which will be held on the first Tuesday after the first Monday in November, 1932.

The United States Constitution, Article 2, Section 1, Clause 2, reads as follows:

"Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress * * *"

United States Code Annotated, Title 2, Chapter 1, Section 2A in the 1931 Cumulative Supplement, provides that at the regular session of the Seventy-first Congress, the President shall transmit to Congress a statement showing the number of persons in each State ascertained under the Fifteenth (or 1930) census, and the number of representatives to which each State would be entitled under an apportionment and that if the Congress to which the statement is transmitted fails to enact a law apportioning representatives, then each State shall be entitled in the Second succeeding Congress to the number of representatives shown in the statement by the President; and that it shall be the duty of the Clerk of the House of Representatives to send to the executive of each State a certificate of the number of representatives to which such State is entitled.

Upon inquiry in the office of the Governor I find that the Clerk of the House of Representatives has filed with the Governor a statement as above provided for, showing that Florida will be entitled to five members of the House of Representatives in the Seventy-third Congress.

United States Code Annotated, Title 3, Chapter 1, Section 2, provides as follows:

"Number of Electors—The number of electors shall be equal to the number of Senators and Representatives to which the several States are by law entitled at the time when the President and Vice-President to be chosen come into office; except, that where no apportionment of representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of Senators and Representatives."

Since the State of Florida is entitled to five members of the House of Representatives in the Seventy-third Congress to be elected this year and to take office at the same time that the President shall be inaugurated, it is my opinion under the last above quoted Federal statute that the num-

ber of Presidential and Vice-Presidential electors to which this State will be entitled will be one for each of the five members of the House of Representatives elected, and one for each of the United States Senators from this State, making a total of seven electors.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORPORATION TAX—HOLDING COMPANIES REQUIRED TO PAY

April 1st, 1932.

Dear Mr. Gray:

This refers to your favor of the 31st ultimo, relative to corporation tax on holding companies.

The filing fee or tax on corporations applies to all corporations, and I find no exception in that law with reference to holding companies. It is my opinion that these companies will have to pay the tax based on their capital just as any other corporation.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CANDIDATE—WHEN REFUND OF QUALIFICATION FEE NOT
AUTHORIZED

May 20th, 1932.

Dear Mr. Gray:

This refers to your favor of May 20th, relative to refunding fees to candidates who retire from the race.

My predecessor in office, the Honorable Fred H. Davis, now a member of the Supreme Court of Florida, under date of May 22nd, 1930, rendered the following opinion:

May 22, 1930.

Dear Sir:

Qualification fees paid by candidates cannot be refunded when the candidate through his own act in failing to comply with the law has disqualified himself as a candidate. Neither can these fees be returned to the candidate when he retires from the race voluntarily if he waits until after the final day for qualification in order to retire.

The last day for qualification was May 8th. If the candidate retired on or before that time he can get his money back because the ticket is not yet made up in the eyes of the law. But after

the last day of qualifying the ticket is in the eyes of the law made up as of that date and the money cannot be refunded.

Trusting this answers your inquiry of April 30th on the subject, I am

Yours very truly,

FRED H. DAVIS,
Attorney General."

The last day for qualification for the office of Governor, or any State office in this year was May 8th, or, as I ruled, if the qualification papers were received on the 9th, inasmuch as May 8th was Sunday, that qualification on the latter date would be sufficient in the law. Inasmuch as the case you submit is where the candidate withdrew his name as a candidate on May 17th, which was clearly after the final date for qualification, it is my opinion that these fees cannot be refunded. I concur in the opinion of Judge Davis, above set forth, which clearly covers the instant case with reference to which you make inquiry.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

PRIMARY ELECTION BALLOT—NAME OF CANDIDATES NOT TO
BE PRINTED ON IF EXPENSE STATEMENT NOT FILED

May 20, 1932.

Dear Mr. Gray:

In compliance with your verbal request for an opinion relative to whether or not it is your duty to omit from the primary election ballot the names of candidates who fail to file expense statements as provided by Sections 421, Compiled General Statutes, and Section 150 of Chapter 13761, Acts of 1929, permit me to say:

Section 8197, Compiled General Laws of 1927, reads as follows:

"8197. (5933) Candidate failing to file statements of campaign expenses not to have name printed on ballot; officers issuing certificate, etc. Any candidate who fails to make and file the statements required by Section 421, in the form and at the time specified, shall not have the right to have his name placed upon the ballot to be used in the primary election, and those intrusted with the preparation of such primary ballots shall, upon the certificate of the officer with whom said statements are required to be filed, that a candidate has failed to file such statement or statements, omit his name therefrom. The name of no candidate failing to file such statements as required by said section shall be allowed or printed on the official ballot used in the general State and County election, and no com-

mittee, officer or board authorized to issue commissions, certificates of election and certificates of nomination shall issue any such commission or certificate to any candidate who fails to comply with the provisions of the said section. Any officer, and the members of any board or committee violating the provisions of this section shall upon conviction be fined not exceeding five hundred dollars, or be imprisoned not exceeding six months."

Section 8197, Compiled General Laws, makes it a misdemeanor punishable by fine and imprisonment for any officer, member of any board or committee intrusted with the preparation of the primary election ballot, to have the name of a candidate printed upon the ballot who has failed to file expense statements when such failure has been certified by the officer with whom said statements are required to be filed.

I think that an officer with whom candidates' statements are required to be filed would be justified under the law in considering statements mailed on the last day allowed by statute, where the post-mark shows the mailing thereof as filed within the time, even though such statements do not actually reach the officer until the following day, but no statement should be considered as filed within the time specified in the statute unless positive proof can be made that the candidate made every effort within his power to file the statement either by delivery to the officer, or by delivery to a post office in the State of Florida on or before the last day for such statements to be filed.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

CORPORATION—CERTIFICATE OF INCORPORATION

May 23, 1932.

Dear Mr. Gray:

In my opinion Section 6529 of the Compiled General Laws of Florida, 1927, requires the certificate of incorporation to be made by three or more natural persons. A corporation can neither subscribe nor acknowledge subscribing to such certificate, and cannot therefore be taken as one of the three or more original subscribers.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—FILING FEES

May 30, 1932.

My Dear Sir:

This refers to your favor of the 28th instant, in which you make inquiry as to the fee to be paid the Secretary of State for receiving and filing corporation certificates under Section 11829, Laws of Florida, Acts of 1927.

The certificate required under Sections 1 and 2 of this act, when filed with the Secretary of State, shall be accompanied with a fee to the Secretary of State of \$1.00.

Section 12 of this same act requires the filing on or before the 1st day of June of each year *a like certificate* giving *like information* with reference to the then officers and directors of such corporation.

The fee prescribed for the first certificate being \$1.00 and the following certificate being like certificates, in my opinion implies a like filing fee of \$1.00. This seems to me to be the only fair interpretation of this act, and I think these fees should accordingly be so collected upon the filing of these certificates.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

REGISTRATION BOOKS—DUTIES SUPERVISOR IN RE GENERAL ELECTION

July 18, 1932.

Dear Mr. Gray:

Replying to your favor of the 15th instant, permit me to say all that is required of the supervisor of registration relative to preparation of the registration books for the general election is to see to it that the general county registration book is brought up to date by transferring whatever names are necessary to be transferred from the primary election books to the general county registration book.

The entire general registration books do not have to be copied every year. All that is necessary is that the new registrants' names shall be put on the general registration books, if their names are not already there.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—WHEN SUSPENDED PRIVILEGES AND CHARTER RIGHTS RE-ESTABLISHED, ALL TAXES DUE MUST BE PAID

July 19th, 1932.

Dear Mr. Gray:

This refers to your favor of July 18th pertaining to the construction of the provisions of Chapter 14677, Acts of 1931, as amended by Chapter 15726 of the Acts of 1931.

The question which you present is whether or not a corporation which has failed to comply with the requirements of the Act as to its return for the year 1931, and later in the year 1932 desires to re-instate itself, does the corporation owe the fees due for the year 1931, and also for the year 1932.

In the case in which this matter was brought before our Supreme Court, wherein you, as Secretary of State, were the appellant, and the Central Florida Lumber Company, a corporation, was appellee, the Supreme Court used this language:

"The act brought in question does not attempt to deprive a corporation of its franchise for failure to comply with its terms but it makes the payment of its filing fee a prerequisite to transact business and punishes it by withholding all its charter privileges if not paid in six months. This is a reasonable regulation not near so harsh as that imposed in other states for a like delinquency."

Further on in the same opinion the Supreme Court says:

"Our statute does not declare a forfeiture but merely suspends the charter privileges until the tax is paid."

A part of Section 5 of Chapter 14677 uses this language:

"Section 5. Any corporation failing to comply with the provisions of this Act for six months shall forfeit its corporate and charter privileges and shall not be permitted to maintain any action in any court in this State until *such reports are filed and all fees due thereunder paid.* * * *"

Considering the opinion of the Court and the wording of the specific Act, it is my opinion that whenever a corporation wishes to revive and re-establish its suspended privileges and charter rights, it must pay up, not only the current taxes, but all prior unpaid taxes. Therefore, in the specific case you mention, it is my opinion that the corporation must pay the taxes due for the year 1932 and also pay the back taxes of 1931.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—WHEN EXEMPT FROM AD VALOREM TAX

September 19, 1932.

My Dear Mr. Gray:

This refers to your favor of September 16, in which you make request for my opinion as to whether or not a corporation who has property comes within the exemption provided for by Section 12, Article IX of the State Constitution, as amended in 1930, would be exempt from the corporation tax provided for by Chapter 14677, Acts of 1931.

I beg to advise that it is my opinion that any exemption under the Constitutional provision, above referred to, has nothing to do with the corporation tax provided for in Chapter 14677. You can readily understand that a corporation might have a million dollar capital and upon this capital it is required to pay a tax in accordance with Chapter 14677, whereas only

a hundred thousand dollars of this capital might be invested under circumstances as would exempt it from the ad valorem tax, as provided for by our Constitution.

In other words, the Constitutional Amendment, above referred to, does not exempt any corporations provided for by Chapter 14677.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CERTIFICATES OF NOMINATION—NOT AUTHORIZED UNDER
STATUTE

October 4, 1932.

Dear Mr. Gray:

I have your letter of October 4 to which is attached certificate of nomination of H. O. Brown as candidate for the office of Governor and also certificate of nomination of Fred Waite as candidate for United States Senator. These certificates are signed by persons who purport to be chairman and secretary, respectively, of the Non-Partisan League Party, and you request my opinion as to whether these certificates comply with the statutes, and whether you should certify these names as nominees of the Non-Partisan League Party.

The said certificates do not comply with Section 256 of the Revised General Statutes of Florida (the same being Section 312, Compiled General Laws of Florida, 1927) as amended by Chapter 14657, Laws of Florida, Acts of 1931, which now provides:

"The Board of County Commissioners of each county shall cause to be printed on the ballots to be used in their respective counties, only the names of the candidates who have been put in nomination by primary election, or the appropriate executive committee, of any political party in this State. * * * "

The said certificates are not certificates of the appropriate executive committee of any political party and each of said certificates, in my opinion, is not made out in accordance and in compliance with the provisions of Chapter 14657, Acts of 1931; and you are, therefore, in my opinion, without authority to certify these names to the county commissioners, and the county commissioners of the several counties are likewise without authority to print such names on the official ballot to be used at the general election, November 8, 1932.

Very truly yours,

CARY D. LANDIS,
Attorney General.

POLITICAL PARTIES—NOMINEES OF NOT WITHIN PURVIEW
OF LAW

October 7th, 1932.

Dear Mr. Gray:

This refers to your favor of the 6th instant, with which you attack for my inspection certificates of nomination of certain names as candidates of the Prohibition party, the Communist party, the Liberty party, the Non-Partisan League party and the Socialist party. These are certificates by the State Executive Committee of the respective political parties.

The Supreme Court of the State of Florida within the last few days has handed down an opinion in the case of State of Florida, ex rel., H. R. Harris, vs. Wm. P. Belote, et al, as and constituting the Board of County Commissioners of Duval County, Florida, respondents. In this case Mr. H. R. Harris sought a peremptory Writ of Mandamus compelling the county commissioners to print the name of H. R. Harris on the ballot to be used in Duval County in the general election. It was alleged that the relator, Harris, had been duly and regularly nominated by the Executive Committee of the Prohibition party. The Court denied the Peremptory Writ and used the following language:

"The petition fails to allege that the Prohibition Party is a political party within the purview of the statutes of the State of Florida. Political parties are defined by Section 300 R. G. S., 356 C. G. L., Section 256 R. G. S., 312 C. G. L. as amended by Chapter 14657, Acts of 1931, applies only to candidates who are nominees of a political party within the purview of Section 300 R. G. S., 356 C. G. L.

"There is no provision under the laws of Florida as they exist at this time for any candidate other than a nominee of a political party within the purview of the statutes above referred to, to procure the printing of his name on the official ballot furnished by the State and county.

"The privilege of having the name printed on the ballot (since the printing of the ballot is at the public's expense) is one which the State may control, by legislative enactment. State vs. Dillon, 32 Fla. 545, 14 So. 383; Cole Locker vs. 164 Mass. 486, 41 NE. 681; 29 L. R. A. 668. The right of the voter to vote for the candidate of his choice regardless of whether such candidate has been nominated by any political party within the purview of the statutes is not denied. In fact, express provision is made in the statute allowing the voter to write the name of any candidate of his choice in a blank space to be left for that purpose on the ballot and to vote for such candidate. Section 312 (256) C. G. L.

"The petition is denied."

On authority of this decision, it is my opinion, that it is not your official duty as Secretary of State to certify the names included in the certificates heretofore referred to as being attached for my inspection. I herewith return you the certificates in question.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CORPORATION—WORDING OF CHARTER DOES NOT PROHIBIT
FILING

November 18, 1932.

My Dear Mr. Gray:

This refers to your favor of November 18th, submitting proposed charter of the Tampa Florida Brewery, Inc., and you request my opinion as to whether or not owing to the wording as to general nature of the business of this proposed corporation you should file the charter.

Inasmuch as the wording of the proposed charter recites that the manufacture of alcoholic beverages enumerated is to be "as authorized by law," it seems to me that it will be your duty as Secretary of State to file this charter. You understand this does not authorize this corporation to make or engage in the barter or sale of any intoxicating liquors or alcoholic beverages that violates the law as the law now stands.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

COUNTY SURVEYOR—QUESTION AS TO QUALIFICATION MUST
BE DECIDED BY COURT

November 30, 1932.

Dear Sir:

Replying to yours of the 29th instant, permit me to say Chapter 15,657, Acts of 1931, pertains to the manner in which a person may qualify to be a land surveyor in this State.

The law provides for the election by the people of a County Surveyor in each county. I do not think it would be any more the duty of the Secretary of State to inquire into the qualifications of a person duly certified as having been elected County Surveyor of a county before issuing him a commission than it would be the duty of the Secretary of State to inquire into the qualifications of any other person who might be certified as having been elected to any other State or county office. The question of whether or not a person is qualified, under the laws of this State, to hold a State or county office is one which must be decided by a Court of competent jurisdiction.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COMPTROLLER

HON. ERNEST AMOS

TAX SALE CERTIFICATE—AMOUNT REQUIRED AND METHOD
OF REDEMPTION

January 8, 1931.

Dear Mr. Amos:

This is in answer to the question asked of this office by Hon. Fred E. Fenno, Clerk of the Circuit Court, Palm Beach County, with reference to the amount which an owner of land would be required to pay to redeem his land from tax certificates sold at the February sale.

Under the terms of the February sale, tax certificates will be sold for the amount which an owner of land would be required to pay to redeem certificate, however, will be entitled to collect from the delinquent land owner identically the same amount of taxes, interest, penalty and costs that the delinquent land owner would have had to pay to the clerk of the Circuit Court to redeem such certificate, had the February sale never been had.

The man who pays the tax certificate has the option of either starting a foreclosure suit on the certificate or advertising for a tax deed. If he begins advertisement for a tax deed, the owner must pay eight per cent flat upon the total amount involved in order to redeem after the advertisement has commenced. Otherwise this eight per cent flat will be eliminated, and only the ordinary amount for redemption required.

In the event the purchaser of a tax certificate wishes to do he may start a foreclosure suit immediately, and in that event the delinquent tax payer will be mulched for an attorney's fee of \$25.00 and ten per cent of the amount claimed, plus all the taxes due and interest and penalties. The taxes represented by the certificates which are to be sold in February are now nearly four years past due, and the only safe course for the land-owner to pursue is to arrange in some way to buy his own certificate and save the above mentioned contingency.

Yours very truly,

FRED H. DAVIS,
Attorney General.MOTOR TRANSPORTATION MILEAGE TAX—CONSTRUCTION OF
LAW AS TO COMPUTING AND COLLECTING

January 16, 1931.

Dear Mr. Amos:

This will acknowledge your request for my opinion as to whether or not under Section 14 of Chapter 13700, Acts of 1929, the applicable mileage tax should be collected from auto transportation companies operating extra vehicles in one direction only to take care of a surplus movement of freight or passengers in such direction, or whether or not under such circumstances the

mileage is applicable both ways although a "pay" load is carried and must of necessity be carried in one direction only.

The matter involved in this request is covered in a former opinion rendered by me under date of September 11, 1930, copy of which is herewith furnished. However, in order that the subject may be clarified in view of the recent developments and evident misunderstanding which has occurred concerning my previous opinion, I deem it advisable to again re-state what I consider the proper construction of Section 14.

I might add that Section 14 was construed by Circuit Judge E. C. Love in a case heard before him, and that Judge Love held that the mileage tax provided for by Section 14 was in effect an excise tax upon the franchise granted under the act, but measured by the number of miles traveled under the franchise. This view is my own view as to the nature of the tax in question.

Section 14 provides that there shall be collected by the Comptroller from every auto-transportation company to which has been granted a certificate of public convenience and necessity, a mileage tax "for every mile traveled by the motor vehicles of such auto transportation company over the public highways of the State."

In order to render the collection of this tax effective Section 14 provides as follows:

"In order to ascertain the bus mileage of every passenger bus and the truck mileage of every freight truck traveled by the holders of certificates for such purpose, the Comptroller of the State shall prescribe the books and forms of accounts to be kept by the holder of such certificate, and at the end of each current month the said holder of a certificate shall file with the Comptroller and a duplicate therefor with the Commission a statement verified by an officer, if the holder of such certificate is a corporation, or if the holder of such certificate is a person then by such person, showing the mileage made by such said holder of such certificate during the said month."

It was held by Judge Love and it is also my view that this law contemplates that the tax shall be paid on all bus mileage and upon all truck mileage made under the certificate granted, whether a "pay" load or any load is carried or not so long as the mileage traveled is mileage which by the terms of the certificate would be mileage which the holder of the certificate could travel with a "pay" load, without violating the terms and conditions of the certificate.

It is only where the Railroad Commission definitely and specifically limits its certificate to one-way travel or one-way transportation that one-way mileage is to be collected. Such a certificate is an exceptional one and is contrary to the general presumption which would ordinarily apply.

It is undoubtedly within the authority of the Railroad Commission in proper cases, when warranted by the circumstances, to grant certificates

of public convenience and necessity which authorize a one-way haul only and which prohibit a return haul for compensation. In any case where such a limited certificate is granted, a mileage tax should be collected only upon that mileage which is traveled and which might be legitimately authorized under the certificate granted.

Where the Railroad Commission grants a certificate of public convenience and necessity to a bus or truck operator and does not limit the haul under the certificate to a one-way haul only, the certificate must be construed as being a two-way haul permit, and in such case the two-way mileage tax should be collected whether a *pay load* is hauled both ways or not.

Since the nature and character of any certificate is a matter to be decided by the Railroad Commission, my suggestion would be that your office collect from all auto transportation companies holding certificates under the act full two-way mileage for all mileage traveled over the routes specified in the certificate, unless it is certified to you by the Railroad Commission that certain certificates are to be considered as one-way certificates only, in which event one-way mileage tax only should be collected.

The nature of the certificate granted as being a one-way or two-way certificate is a matter which rests within the power of the Railroad Commission to decide, and for this reason I suggest that in order to preserve a uniformity of administration of the act insofar as your office is concerned, that you apply two-way mileage to all certificates, unless or until the Railroad Commission advises you that a certificate is to be otherwise considered.

If any certificates have been issued without making the nature of the same clear as being intended for a one-way certificate only, then it is within the power of the commission to remedy the situation by so amending its certificate as to make its purpose and intent clear with respect to the nature of the certificate.

The question of whether loads are carried or not carried is utterly immaterial insofar as collection of a tax is concerned. If a particular certificate permits a load to be carried, then the mileage tax should be collected upon the mileage traveled by the vehicle, even though not a single passenger nor a single pound of freight is carried in fact. The license covers the privilege of making a trip with a "pay" load if one can be found. If the *privilege* under the certificate has been granted, then the mileage tax must be paid for the mileage traveled by the vehicle, regardless of the load or whether any load at all is carried.

As I have pointed out above, the simplest way to settle the dispute which appears to have arisen is to treat all certificates as two-way certificates in the absence of some showing that a particular certificate is a one-way certificate only, because a one-way certificate would be so extraordinary and exceptional that such fact should affirmatively be made to appear before it is officially recognized.

Yours very truly,

FRED H. DAVIS,
Attorney General.

LICENSE TAXES—CONSTRUCTION OF LAW IN RE REFRIGERATORS AND TANK CARS

January 27, 1931.

Dear Mr. Amos:

Section 1242, Compiled General Laws, provides that every corporation, company, firm or association owning, controlling or operating refrigerator or tank cars or both on or over any railroad or part thereof, or leasing or renting any such cars to any other corporation, firm, company, or association to operate on or transport freight on or over any railroad or part thereof in this State shall on the first day of October of each year make return to the Comptroller of the number of such cars and pay a license tax to the Comptroller in the sum of \$500, provided that this Section shall not apply to any railroad company upon which a license tax is otherwise provided, when such railroad company owns the cars it operates, and provided that no further tax shall be imposed by cities and towns.

The license tax in question is a State license tax. In the case of *Texas Company vs. Amos*, 77 Fla. 328, it was held that the license tax in question did not apply to a corporation engaged in producing, buying and selling oil and oil products, which corporation owned and used its own tank cars for the sole purpose of transporting its own products, which ownership is necessitated by the failure of the railroad company to provide an adequate supply of such cars, but that the license tax in question applied only to corporations owning, controlling or operating tank cars as a business.

Under the statute the tax would not be applicable to a company engaged solely in interstate operation of such cars, but if it engaged in both interstate and intra-state operations the tax would be applicable.

I return herewith the letter of Mr. Kirkland submitted with your communication.

Yours very truly,

FRED H. DAVIS,
Attorney General.

TAX SALE CERTIFICATES—CONSTRUCTION OF STATUTE IN RE DUTY OF TAX ASSESSOR AND TAX COLLECTOR

February 6, 1931.

Dear Mr. Amos:

Chapter 14572, Acts of 1929, undertook to segregate and separate tax certificates held by the State for the years 1927 and prior years from those held and issued for subsequent years. That law authorized a compromise and adjustment of these old certificates and of the subsequent omitted taxes which were due at the time of the adjustment. Since the law gave the taxpayer the right to take up these adjusted taxes on the basis of the adjustment for a period of time which extended beyond the date for making a current assessment, it was absolutely necessary for tax as-

sessors to re-assess the lands involved, even though they were under State tax certificates at the time.

I am of the opinion that such re-assessments of State tax certificate lands upon which the taxes had been compromised and adjusted by local boards was entirely proper and furthermore, that the tax collector should proceed to resell each piece of land pursuant to the assessment made, and issue a new certificate under the 1929 law on such re-assessment.

A tax certificate issued under the 1929 law has greater force and effect than one issued under the previous acts, and while the making of each sale and the issuance of new certificates may involve some additional expense, it appears to be required by the law, and certainly will be productive of good in curing many situations, where because of invalid assessments in the past the land was allowed to be sold to the State instead of being bought in by some private purchaser.

Yours very truly,

FRED H. DAVIS,
Attorney General.

COUNTY BUDGET—COUNTY COMMISSIONERS AUTHORIZED TO TRANSFER FUNDS

February 12, 1931.

Dear Mr. Amos:

This relates to the application of the Board of County Commissioners of Pinellas County for permission to transfer funds from other county budget appropriations to meet a deficit in the county budget appropriation made for the purpose of maintaining the poor farm and caring for paupers in the county.

Under the law a budget of prospective expenditures is required to be prepared and the budget amount cannot be exceeded, because the amount named in the budget amounts to a fixed appropriation which cannot be altered by the Board of County Commissioners after the budget is approved. However, there is a provision in the statute which does permit any moneys to be expended by the county commissioners which may accrue in a particular fund in excess of the amount originally budgeted for that fund.

Under the statute it is possible for such an excess to come about in either one of two ways. First by the collection of tax moneys in excess of those anticipated, as where for example, there would be an unusual amount of tax redemptions or some unexpected revenue realized which was not reasonably contemplated and provided for in the budget. Second, by the transfers authorized from other funds to be made by county commissioners with the approval of the Comptroller under Section 2304, Compiled General Laws.

Section 3 of Article XIII of the Constitution imposes the mandatory constitutional duty on the counties to provide in the manner prescribed by

law for those of the inhabitants that by reason of age, infirmity or misfortune may have claims upon the aid and sympathy of society.

In view of the fact that the amount originally placed in the budget by the Board of County Commissioners to care for this constitutional duty has become exhausted, although the need for further expenditures has not been met, it will, in my opinion, be proper for the county commissioners with your approval to transfer from any other available county fund, where it may be spared, amounts sufficient to enable the county commissioners to discharge the demands made upon the exhausted fund. It is for this purpose that Section 2304, Compiled General Laws, exists, and is operative for the purpose of enabling the county board with the approval of the Comptroller to transfer an excess in one fund to meet a deficit in another.

The money which is transferred then becomes an excess amount in the fund to which it is transferred, and is subject to such appropriation as the county commissioners are permitted by law to make out of the fund to which it is finally transferred. This transferred money thus acquires exactly the same status as if it had been collected in the fund in excess of the anticipated revenue, and there having been no appropriation made of such money in the budget, it becomes subject to current appropriation by the county commissioners as excess revenue for any lawful purpose.

The effect of such transfer, however, is to reduce the amount of the budget fund from which the transfer is made by the amount of the transfer, unless excess revenues should be received from some other source into the fund from which the transfer is made.

I am of the opinion that you are authorized to approve the transfer requested by the Board of County Commissioners of Pinellas County under the circumstances.

Yours very truly,

FRED H. DAVIS,
Attorney General.

TAX SALE CERTIFICATES—COMPTROLLER WITHOUT AUTHORITY TO CANCEL IN CERTAIN CASES

February 12, 1931.

Dear Mr. Amos:

Section 897, Compiled General Laws, provides that property of educational, literary, benevolent and scientific institutions within this State as shall be actually occupied and used by them solely for the purpose for which they have been or may be organized, shall be exempt from taxation.

However, the statute is not self-executing and persons who desire to claim the benefit of tax exemption under the laws of Florida should do so in connection with the returning of their property for taxation, and the listing of the same on the tax books, and not wait until after the property has been sold and a tax certificate issued against the property in order to claim the exemption.

Section 917, Compiled General Laws, makes it the duty of every person owning or having the control, management, custody, direction, supervision or agency of property of whatsoever character that is subject to taxation under the laws of this State to return the same for taxation to the County Assessor of Taxes in the proper county.

Where property is exempt from taxation for special reasons not evident on the record or not personally known to the tax assessor, it is the duty of the taxpayer to make a return of his property and to claim the exemption in the return. In the case certified to you by the Clerk of the Circuit Court, it does not appear on the face of the tax assessment that the property was or should have been exempt from taxation. Neither does it appear that any claim for the exemption was made prior to the time the property was sold for taxes which the tax assessor placed on the same.

While undoubtedly the tax assessor has a right to classify as exempt property which is actually exempt under the laws of the State of Florida from taxation, even though no claim of the exemption is made, it is nevertheless the duty of the taxpayer to make the claim and to make it each and every year for which the exemption is claimed. If the taxpayer fails to claim the property as exempt and fails to assert his exemption at any time prior to the time the property is sold and a certificate on the same is issued to some third party purchaser, in my judgment it amounts to a waiver of the legal right to the exemption and there is no authority on the statute which would permit you to cancel a tax certificate issued, even though it is on exempt property, after the tax sale has been had and the tax certificate has been sold to a member of the public who is now the holder thereof in good faith.

The situation might be different if the certificate on the property were still held by the State of Florida. However, the record shows that the property covered by the certificate was not such as *on its face* was exempt from taxation so as to give the purchaser of the tax certificate notice of the exemption. The property was put on the tax books and an assessment apparently lawfully made against the same by the tax assessor. No claim was asserted before the tax assessor nor before any other officer for the exemption until after the tax sale was made and the certificate on the property sold and delivered to an outside person as a tax certificate purchaser, who evidently purchased the same and became a bonafide holder of same without notice of any claim of exemption.

The statute only authorizes the Comptroller to cancel a tax certificate when it was illegally issued. In my opinion the tax certificate involved in this case was not illegally issued, because there was nothing on the record at the time it was issued to show that there was any exemption on the property covered by the certificate. If it be admitted in this case that the tax certificate was illegally issued and is subject to cancellation by the Comptroller, then no person would be safe in purchasing a tax certificate without not only consulting the record of the tax assessment, but of personally viewing the property and seeing whether or not there might not be located thereon some educational institution or some other fact exists which would make the property exempt.

This case is covered by a ruling recently made by the Circuit Court of Duval County, where in a tax certificate had been issued on a negro Odd Fellows Lodge without any exemption having been claimed on the property because of its nature. The Court refused to cancel the tax certificate as void, but held that the failure to assert the exemption amounted to a waiver of the right. Under our constitutional system a person who has legal rights, even the right of life itself, may waive it by failure to take proper steps to assert such rights when they are challenged.

Orderly procedure in the administration of the tax laws requires those who claim exemptions from taxation based upon peculiar facts relating to their own status which do not appear of record as a matter of course, to make such facts appear on or before the day the property is sold for taxes, or else the rights of exemption will be lost.

If the tax assessor knows of the facts warranting the exemption, he may, of course, note such facts on the record and allow it. But he is under no duty or obligation to ferret out the facts unless they are called to his attention in a proper way.

I am therefore of the opinion that the Comptroller is without authority to cancel the tax certificates referred to by Mr. Dickenson for the reasons mentioned, unless there is something on record on the tax rolls of Hillsborough County or somewhere in the proceedings relating to the assessment of the property for taxation, which shows that an exemption of the property was claimed and improperly denied.

Yours very truly,

FRED H. DAVIS,
Attorney General.

GASOLINE TAXES—CONSTRUCTION AND APPLICATION OF STATE STATUTES

February 20, 1931.

Dear Mr. Amos:

This is in answer to your letter of February 16th requesting my opinion concerning the application of the State statutes relating to the collection of gasoline taxes when applied to certain particular transactions mentioned in your letter.

The transactions in issue will be dealt with under separate paragraphs hereinafter enumerated:

1. Gasoline taxes levied against dealers in gasoline in this State are required to be paid for every gallon of gasoline sold by such dealers. The Supreme Court has held that such tax is a sales tax and is an excise tax on the transaction of sale. The tax is therefore collectable upon every gallon of gasoline sold in Florida, regardless of the purpose for which the gasoline was sold on the one hand, or purchased on the other. The single exception is that where a sale is made for the purpose of executing a transaction in interstate commerce, the tax is not collectable on such sale in Florida.

In the case of *Superior Oil Company vs. the Attorney General of Mississippi*, 74 L. Ed. 504, it was held that sales of gasoline made with knowledge that the bearer contemplates the holding of same in interstate commerce or the use of same in interstate commerce, or the transportation of the same outside of the State does not make the sale a transaction in interstate commerce. It is only where a contract is specifically made which has for its object the distinct purpose of being fulfilled be a transaction in interstate commerce that the contract can be said to be a part of such commerce.

This means in effect that where a person in Florida sends an order to a dealer in some other State or makes a contract with a dealer in some other State for the sale and delivery to him in Florida of a specified and identified amount of gasoline which at the time of the making of the contract is outside of the State of Florida and will have to be transported to the State of Florida to fulfill the contract, that then such a transaction is one in interstate commerce, and the Florida gasoline sales tax cannot be applied to it.

On the other hand, where a contract is made for the purchase of a certain quality of gasoline, and the contract as made does not contemplate at the time it is made any particular gasoline being delivered to fulfill the contract, but it is left optional with the oil company as to whether it will fulfill the contract with gasoline which is at the time in Florida, or in some other state or country, then the fact that gasoline is brought in from some other State or country to fulfill the contract *at the option of the oil company* does not make such a transaction of bargain and sale one in interstate commerce, nor is such a sale relieved of its liability to the Florida tax.

Many transactions have been gotten up by customers of oil companies with a sole object in view of using the alleged interstate character of such sales as a shield to prevent the collection of the Florida sales tax. It is therefore important that it be clearly understood that the liability for the tax is not affected, as the Supreme Court of the United States has held in the case I have just referred to, by the fact that the gasoline is transported or intended to be transported by the purchaser into another state after it is acquired under the transaction of bargain and sale.

As the Supreme Court of the United States expresses it, "a distinction has been made between sales made with a view to a certain result, and those made simply with indifferent knowledge that the buyer contemplates that result." It is not the intention of either party that controls the matter. It is the legal effect of the transaction and the essential character of the acts required to complete it that determine its legal status.

A colorable or pretended transaction asserted to be made under the commerce clause cannot be used as a device to evade liability for a State tax. As the Supreme Court of the United States says on this point, "the importance of the commerce clause to the Union, of course, is very great. But it also is important to prevent that clause being used to deprive the states of their life blood by a strained interpretation of facts."

2. Gasoline shipped into this State and stored in containers cannot be sold and shipped out of this State without payment of the storage tax, if such

gasoline becomes divested of its interstate character while stored in Florida for a period of twenty-four hours or more, after it comes to rest in this State. Of course, if gasoline in containers has already been sold pursuant to contracts, and the containers are merely unloaded and kept in this State for a short time awaiting a re-shipment by another form of transportation, but are at all times actually in a stream of commerce moving through the State, then neither the sales tax nor the storage tax can be applied.

3. It must be borne in mind that the gasoline storage tax under the 1929 law does not apply on the mere storage alone. In order for the tax to apply, the gasoline must be stored for use or consumption in Florida. Therefore, insofar as the gasoline storage tax is concerned, an oil company has the legal right to maintain a storage tax in Florida for the purpose of enabling it to send its oil delivery wagons into other States and to make a sale and delivery of gasoline in such other states, and without paying a gasoline storage tax on that gasoline which is only kept or stored in Florida for the purpose of conducting business in some other State than Florida, or with foreign countries.

In short, the gasoline storage tax provided by the 1929 law is in reality intended to operate as a consumption tax on gasoline used in Florida, which has not already been subjected to a sales tax. The law was primarily gotten up to reach large users of gasoline, who made specific contracts of bargain and sale with oil companies for such gasoline, which under the Federal commerce clause could not be reached by the Florida gasoline sales tax law, but which could be reached after the gasoline had been shipped and come to rest in Florida, and had lost its interstate character by having applied to it a tax levied upon the storage for consumption and use of such gasoline in this State.

4. An oil company has a legal right to maintain in Florida gasoline storage tanks for the storage of gasoline to be used solely for filling interstate orders received by it from other states, pursuant to which it makes delivery of gasoline to such other states without paying a storage tax upon the gasoline so stored because it is not intended for use and consumption in Florida, but is kept and intended for delivery to other states in fulfillment of interstate contracts.

I trust in the foregoing letter I have stated such principles in such clear language as will enable you to properly execute the law.

Yours very truly,

FRED H. DAVIS,
Attorney General.

GASOLINE—WHEN NOT SUBJECT TO STATE TAX

February 23, 1931.

Dear Mr. Amos:

This is in answer to your communication of February 17th with reference to the collection of gasoline taxes on gasoline, which has been delivered by the Richfield Oil Corporation of New York to Pan-American Airways to be used by aeroplanes as fuel in flying to foreign countries.

If such gasoline is received and stored in Florida and kept here solely by the Pan-American Airways for its use as a fuel in aeroplanes flying to foreign countries, such gasoline is not subject to a gasoline storage tax because our gasoline storage tax law does not apply on the mere storage, but upon storage of gasoline intended for use and consumption in Florida.

Since such gasoline as would be used by an aeroplane beyond the limits of the State or in interstate flying would not be intended for use and consumption in Florida, the tax could not apply on the storage of it for interstate or foreign use.

The question of whether or not such gasoline would be subject to the gasoline sales tax will have to be determined by the nature of the transaction by which such gasoline was acquired. If an order contemplating a specific shipment of gasoline is shown to have been sent from Florida to some other State for the acquisition of a specific shipment of gasoline, which at the time of the making of the contract or the sending of the order is located in such other State and must be transported therefrom to Florida, in order to fulfill the contract, then such a contract which contemplates such a specific and definite result is one of interstate commerce, and the mere delivery of gasoline pursuant to such contract will not be a bargain and sale transaction which could be taxed in Florida, since whatever bargain and sale is involved is one in interstate commerce and cannot be taxed as such.

Trusting this statement of the rule will be helpful to you in deciding the contention raised by the counsel for the Richmond Oil Corporation of New York, I am,

Yours very truly,

FRED H. DAVIS,
Attorney General.

TAX SALE CERTIFICATE—RULES OF LAW AS TO REDEMPTION

March 3, 1931.

Dear Mr. Amos:

Answering your inquiry of this date, I beg to advise that tax certificates which are sold at reduced prices under Section 42 of Chapter 14572, Acts of 1929, are subject to the same rules of law as to redemptions, as apply to other tax certificates sold at par.

This means that regardless of what amount is paid for a tax certificate by the purchaser of it, such purchaser has the right to demand from the property owner who desires to redeem the same, the full face value of said certificate plus interest, penalties and costs. The owner has the right to redeem until a tax deed is actually issued or until a decree of foreclosure has actually been concluded against the property.

Redemption after suits are started are to be made under Section 21 of the Act.

Yours very truly,

FRED H. DAVIS,
Attorney General.

GASOLINE FUND—PREREQUISITE FOR ROAD AND BRIDGE
DISTRICT PARTICIPATION

March 27, 1931.

Dear Mr. Amos:

Replying to your favor of the 26th instant, relative to the Jensen Road and Bridge District bringing itself within the terms of Chapter 14485, Laws of Florida, Acts of 1929, I beg to advise as follows:

1. It is my opinion that this District is such a district as comes within the terms of this Act. It is true that the bridge across the Indian River was formerly a toll bridge, but this bridge was made a free bridge by Act of the Legislature in 1927. See Chapter 12942, Laws of Florida, Acts of 1927. And thus at the time of the enactment of Chapter 14486, the bridge was not a toll bridge, and it is my opinion that this district clearly comes within the terms of Chapter 14486.

2. The district, of course, must, before it can obtain the benefits of Chapter 14486 fully comply with the Act by transferring to the State Treasurer all securities, moneys, bonds, etc., and in all other matters fulfill the requirements of the Act.

3. The district not having yet fully complied with the terms of the Act, it will not share in the benefits of the Act as to participation in the gasoline tax, etc., until it does so qualify. When the district fully complies with the Act, then it should share in the proceeds of the gasoline tax collected for the month following such compliance, and from then on.

4. I am of the opinion that no re-allocation of gasoline funds already collected can or should be made.

Respectfully submitted,

CARY D. LANDIS,
Attorney General.CONSTRUCTION OF STATUTE IN RE TAX SALE CERTIFICATES
LEGALITY OF NOTICE

May 13, 1931

Dear Sir:

I have your letter of the 12th instant enclosing letter of Hon. T. D. Lancaster, Clerk of the Circuit Court, for Marion County, Florida, under date of April 30th, 1931, also letter from Messrs. Hampton and Green of Ocala, Florida, to you under date of May 7th, 1931, with reference to the legality of notice published by the Clerk of the Circuit Court for Marion County of the sale of tax certificates held by said Clerk.

It appears that there are two questions presented for determination: (1) whether the notice of the sale on March 25th, 1931, was published for the length of time required by law, and if not (2) whether such sale might lawfully be held under the notice published on the 17th day of December, 1930, for the sale of January 19th, 1931.

As to the first question, to-wit, the legality of the notice of sale to be held on March 25th, 1931, Section 42 of Chapter 14572, Laws of Florida, Acts of 1929, requires the publication of such notices to be made "at least thirty days before the day fixed for the sale". Nothing less than thirty days' publication of such notice would be legal, and a sale held in pursuance of an illegal notice would in all probability likewise be held to be illegal. Under any rule for computing time, the notice, if published on February 24th for the sale to be held on March 25th following, fell short of the required thirty days.

As to the second question, to-wit, whether the sale on March 25th might be authorized under the notice of sale for January 19th, it is my opinion that this question depends for its determination upon certain facts. It is provided in the second paragraph of Section 42 of Chapter 14572 that such sales shall be made by the Clerk and may be continued from day to day until all certificates are sold. Under this provision of the statute, the Clerk has the authority to continue such sale from day to day until all certificates are sold, but whether such sale was continued from day to day or whether the sale was by the Clerk terminated and a new sale instituted and held by the Clerk depends upon what was actually done. It appears from the letter of Messrs. Hampton and Green that the notice of sale published on December 17th, 1930, for the sale of January 19th, 1931, provided that such sale should be held on the date named therein for thirty days only. It seems, therefore, that the Clerk in the first instance limited the first sale by his notice therefor to a period not to exceed thirty days from the date fixed therein. In the next place, it seems that the Clerk would be held to have terminated the period of the first sale by his act of re-advertising a second notice of a second sale, to-wit, the sale of March 25th, 1931.

I am inclined to think, therefore, that there is too much risk to run in standing on the notice published on February 24th of the sale of March 25th, and it is my opinion and suggestion that all certificates sold in pursuance of the notice published February 24th, 1931, be re-sold on same date fixed by you, upon publication of notice therefor to be made at least thirty days before such date of sale.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX SALE CERTIFICATES—CERTAIN PROCEDURE FOR
FORECLOSURE NOT AUTHORIZED

May 15, 1931.

Dear Mr. Amos:

Replying to your favor of the 14th instant in which you recite the fact that under Chapter 14572, Laws of Florida, several counties of the state have contracted with attorneys to foreclose outstanding State Tax Certificates without employing the sale feature provided in that Act, and that in a number of the counties a provision was made for the County Commissioners

to advance the lawyers employed a sum of money out of the proceeds of the sale of such tax certificates in order to carry on the necessary investigation work, I beg to advise that there is no provision made in the Act for such a proceeding, and there being no such provision, you state that an Injunction has been issued by the Court against the County Commissioners of Hillsborough County enjoining them from paying out such money to their attorneys.

It is my opinion that it would be advisable for you to hold up payments of this character in other counties until this suit is disposed of and also in Hillsborough County of that part of the funds that were being advanced by the State for that purpose.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

COLLECTION AGENCIES, IN RE LICENSE TAX

Dear Mr. Amos:

Returning to you the letter from the Wrennick Collection Agency of Orlando, Florida, and in compliance with your request for an opinion as to the license tax on collection agencies, I beg to quote that Section of the statute covering license taxes on collection agencies, which is as follows:

"Claim and collection agencies not taxed as bankers or lawyers, each agent or active member of same shall pay a license tax of \$20.00".

It is my opinion that the Wrennick Collection Agency must be a collection agency. Their letter-head shows that is the way in which they are advertising themselves, and the matter of collections is evidently their main business, and this being so, it is my opinion, that they should pay the license tax that the law requires to be paid by collection agencies. It is true that attorneys frequently make collections and it is probably just the same or similar work to that done by collection agencies, and to this extent there seems to be an overlapping of the business of an attorney and that of a collection agency.

Where an attorney holds himself out as an attorney at law, practicing his profession, he pays the license tax required of attorneys, and it is immaterial that a part of his business is that of making collections. On the other hand where people hold themselves out as a collection agency, they are clearly within the statute which requires the payment of a license fee provided for with reference to such agency, and this matter has to be worked out very largely as a matter of practical application by the Tax Collectors of the counties where the companies are carrying on their business.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

STATE BANKS—LIABILITY OF SHAREHOLDERS

May 22, 1931.

Dear Mr. Amos:

I have your letter of the 19th instant requesting my opinion as to the constitutionality of Section 6059 of the Compiled General Laws of Florida 1927, as amended by Section 3 of Chapter 13576, Acts of 1929.

From the correspondence attached I note that the contention is made that the amendment to said Act is unconstitutional as applied to stockholders owning and holding shares in State banks prior to the enactment of the amendment of 1929 on the alleged ground that the same impairs the obligation of contract.

Legislative enactments are presumed to be valid and constitutional until declared otherwise by a court of competent jurisdiction, and it is the duty of administrative officers to give effect to this presumption in administering laws affecting their duties as such. The courts in construing statutes resolve all reasonable doubt as to their constitutionality in favor of the validity of such enactments.

The liability of shareholders of State banks under the provisions of Section 6059 is not for the benefit of particular creditors, but is for all contracts, debts, and engagements of such company, and arises *ex contractu* by the act of subscription for such stocks or shares, whereby the stockholder becomes subject to the provisions of law creating and fixing his liability.

The original statute making stockholders of banks individually responsible for all contracts, debts, and engagements of the bank to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares, was Section 20 of Chapter 3864, Acts of 1889, and this probably antedates the acquisition of the shares of stock of the parties against whom suit or suits have been instituted in the matter related in your letter.

The amendment of Section 3, Chapter 13576, Act of 1929, to Section 6059 of the Compiled General Laws, did not create any new liability against stockholders of banks, but merely extended or continued that liability already created by law in all cases where the shareholder transfers his shares or registers the transfer thereof to another within six months before the date of the failure of such bank to meet its obligation, or at any time with knowledge of such impending failure.

There is nothing in the amendatory provisions of the Act which creates any new liability against the shareholder, and it could hardly be said to impair the obligations of his contract. Banks are quasi public institutions and the primary purpose of the amendatory as well as the original Act was to protect the creditors of banks by prohibiting the disposition of shares in anticipation of insolvency of banks for the purpose of evading the statutory liability.

This being true the original as well as the amendatory Act are proper subjects for legislative regulation. And I am of the opinion that the Supreme Court would hold the Act to be valid and constitutional as against the question raised.

I am returning the enclosures with your letter.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX COLLECTORS—NOT ENTITLED TO COMMISSIONS
IN CERTAIN CASES

May 29, 1931.

Dear Mr. Amos:

I have your request for an opinion as to whether the county tax collectors are entitled to a commission on delinquent taxes when the land against which such tax is assessed is sold to the State for non-payment of the tax.

Section 972 of the Compiled General Laws of Florida requires the tax collectors on the day designated in the notice of sale to offer for sale all land on which the taxes have not been paid, and in case there are no bidders that the whole tract shall be bid off by the tax collector for the State.

Section 757 of the Revised General Statutes of 1920, now Section 970 of the Compiled General Laws of Florida 1927, provided that the tax collectors should be entitled to five per cent commission on the amount of each delinquent tax, when actual sale was made. This Section of the statute was amended by Section 4 of Chapter 14572, Laws of Florida, Acts of 1929, by which it is now provided that tax collectors shall not be entitled to any commission for the sale of such property made to the State of Florida.

In the case of *Hart vs. Empire Land Company*, 86 Fla. 387, 98 So 223, it was held that the tax collector was not entitled to commissions where no actual sale is made.

In *Rawls, et al, vs. State ex rel Nolan*, 98 Fla. 103, 122 So. 222, the Supreme Court of Florida said:

"Public officers have no legal claim for official services rendered except when, and to the extent that, compensation is provided by law, and when no compensation is so provided, the rendition of such services is deemed to be gratuitous."

Based upon the statute and opinions of the Court referred to and quoted, it is my opinion that the county tax collectors are not legally entitled to commission on account of the sale of land to the State for non-payment of taxes assessed thereon.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX SALE CERTIFICATES—PAYMENT OF COSTS AND
EXPENSES INCIDENT TO SUITS

June 3, 1931.

My Dear Mr. Amos:

Hon. William E. Thompson, Attorney at Law of Tampa, Florida, has written me under date of May 29th, 1931, relative to the payment of costs and expenses incident to suits on tax certificates provided for by Chapter 14572, Laws of Florida, Acts of 1929.

Mr. Thompson states in his letter that he has been employed by the Board of County Commissioners of Hillsborough County to bring foreclosure suits on various designated tax certificates. He states that he has incurred costs and expenses in connection with these suits and that he has some bills that were incurred during the month of April which remain unpaid and which he is anxious to have paid. Section 19 of the above Chapter 14572 provides that:

"Suits on tax certificates and deeds held by the State shall be brought in the name of the State of Florida for its own use and for the use of the county in which the land lies. The *costs of suits and attorney's fees* if not paid out of the proceeds of sale shall be paid by the State and county in such proportion as may be determined by the Court. When suit shall be ordered as hereinafter provided, the Board of County Commissioners shall employ an Attorney or Attorneys for that purpose."

A part of Section 24 of the same Chapter provides that:

"In case a sale under final decree in any such action commenced by the State of Florida no one bids a sufficient sum to pay the full amount of decree, interest thereon and subsequent costs, the officer conducting the sale shall announce that the land is sold to the Trustees of the Internal Improvement Fund of the State of Florida for the amount of the decree, interest and costs, and such sale shall be reported to the Court and shall be confirmed and deed made to the said Trustees. *In such event the costs and expenses of such suit and sale shall be paid by the Comptroller from funds appropriated for the expenses of the collector of revenue. . . .*"

It seems to me that in the very nature of things it will be necessary for such money to be advanced to take care of such costs as are necessary to be incurred to carry on these suits and to such extent as it is absolutely necessary, it is my opinion that money should be advanced for this purpose and then when the litigation is closed the accounts can be adjusted and taken care of in accordance with the Sections of the Chapter as above quoted.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BANKS, CLOSED—CLAIMS MUST BE SWORN TO AND
FILED WITH LIQUIDATOR

June 3, 1931.

My Dear Mr. Amos:

Returning you the letter herewith addressed to you under date of May 23rd, 1931, McCune, Hiaagen and Fleming, I beg to advise that this office has not ruled that a depositor in a closed bank can verbally file his claim.

The matter of filing claims is set forth in Section 18, Chapter 13578, Acts of 1929, which Section 18 is as follows:

"Section 18. That Section 1 of Chapter 7935 of the Laws of Florida be amended so as to read as follows:

Section 1. That all claims of every kind and nature against a State Bank or Trust Company that has been placed in the hands of a liquidator must be properly sworn to and filed with the liquidator thereof within one year from the date of the qualification of the liquidator thereof of the bank or trust company, and no claims not so filed within twelve months from the date of the qualification of the liquidator thereof shall be included by the liquidator or Comptroller in the distribution of the assets."

Respectfully yours,

CARY D. LANDIS,
Attorney General.

DELINQUENT TAXES—CHARGES FOR PUBLISHING LISTS
IN CERTAIN CASES

June 16, 1931.

My Dear Mr. Amos:

This is in response to your request for an opinion as to the publisher's charges for advertising delinquent taxes in those counties where there are delinquent Everglades Drainage District taxes and delinquent Flood Control taxes.

Under the law this divides itself into two divisions. First, where there are State and county taxes delinquent and, Second, where there are no State and county taxes delinquent.

The Everglades Drainage District Act, which was Senate Bill No. 332, page 74, sub-section (b) uses this language:

"The newspaper charges for advertising in connection with such sale shall be at the rate of 10c per line per single column for setting forth in such column the amount of drainage taxes unpaid upon each parcel of land which is also delinquent for the payment of State and county taxes".

The Flood Control Act has the same language.

To set this up in a newspaper, it will require a three column space, then where the State and county tax is delinquent and no Everglades Drainage

District Tax and no Flood Control tax is delinquent, two columns will be used, and under the State law the publisher will be entitled to 30c for this single line, per two columns. If there are State and county taxes, and Everglades Drainage District taxes and no Flood Control tax, the publisher will collect 30c for the State and county or two columns plus the column used for Everglades Drainage District taxes, or a charge of 40c for the line extending across the three columns. If there are State and county taxes and Everglades Drainage District taxes and Flood Control taxes due on the same property, the publisher will collect 30c for the two columns per line, State and county taxes, plus 10c for the Everglades Drainage tax and 10c per column for the Flood Control tax or a total charge of 50c.

Now with reference to the case where there are no State and county taxes due, and the advertisement is only with reference to either the Everglades Drainage District or the Flood Control District tax, or both, the law above referred to, which is a further quotation from Section (b), page 74 of the Senate Bill above mentioned, is as follows:

"And at the rate of 15c per line per single column for showing in such advertisement any lands which are not delinquent for the payment of State and county taxes".

Thus if a description of land has only the Everglades Drainage District taxes as unpaid, the publisher will be entitled to 15c per column or 30c per line for the two column space for the description and ownership, plus the 15c for the Everglades Drainage District tax which extends in the third column, or a total charge per line for the three columns of 40c. Where there is both Everglades Drainage District taxes unpaid, and Flood Control taxes unpaid, and no State and county taxes unpaid, the publisher will be entitled to 30c for the two columns covering a description and ownership, plus 15c for the line for the Everglades Drainage District tax, and plus 15c for the line for the Flood Control tax, or a total for the line of 60c.

The Flood Control Act, which was House Bill No. 799, in Section 22 thereof, provides that the Tax Collector shall add the unpaid taxes for Flood Control for the year 1929 and 1930, figuring interest on the 1929 tax at the rate of 8% per annum from the first day of April 1930, to the first day of April 1931, and shall add the tax of 1929, plus the interest and the tax of 1930 and advertise the same as one amount of unpaid taxes for Flood Control. The publisher should make heading in column advertising Flood Control tax accordingly. I wish to state that the law is not as clear as it might be, but I believe the above is the proper computation as nearly as it can be worked out to meet the different terms and wording of the various laws involved.

Very respectfully,

CARY D. LANDIS,
Attorney General.

STATE ATTORNEY—ENTITLED TO SALARY UNTIL
SUCCESSOR DULY QUALIFIED

June 18, 1931

Dear Mr. Amos:

This refers to your letter of the 18th. instant, in which you request my opinion as to whether or not a State Attorney is entitled to his salary after the expiration of the term of his commission, until his successor is duly qualified.

Section 14 of Article XVI of the Constitution of the State of Florida is as follows, to-wit:

"Section 14. All State, County and Municipal officers shall continue in the office after the expiration of their official terms until their successors are duly qualified".

I am, therefore, of the opinion that the State Attorney in question is entitled to his regular salary and fees allowed him by law until his successor fully qualifies.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CLOSED BANKS—LIQUIDATION OF ACCOUNTS IN RE COUNTIES
AND MUNICIPALITIES—RULE OF SET OFF

July 7, 1931.

Dear Mr. Amos:

Replying to yours of recent date, in which you state that in several closed State banks, municipalities and counties have had funds on deposit, such funds being secured by bonds issued by the same municipalities and counties, and in which you ask for an opinion from this office on the question of whether or not under the law the equitable rule of "set-off" applies, permit me to say:

The ordinary equity rule of set-off in case of insolvency is that, where the mutual obligations have grown out of the same transaction, as in this case, insolvency on the one hand justifies the set-off of the debt due, on the other;

There is nothing in the statutes relating to obligations between insolvent banks and counties or municipal corporations which prevents the application of that rule to the liquidator of an insolvent bank under circumstances like these in this case.

See Section 4326, Compiled General Laws

See *Scott vs. Armstrong*, 146 U. S. 499

See *Skiles vs. Denlow*, 110, Pa. St. 264

As we understand the matter, the Act of 1929 imposed upon the State Board of Administration the duty of administering the sinking funds accu-

mulated for the payment of bonds issued for the construction of roads and bridges by the counties and by special road and bridge districts, therefore, we think the question of whether or not you should advise the liquidator to take the matter up further with the County Commissioners is one which should commend itself to your discretion.

You ask to be advised how to proceed in the matter: It appears that under the circumstances there is nothing you can do farther than to call the attention of the bank Liquidators to the equity rule of set-off stated in the second paragraph of this opinion and request all parties concerned to be governed by that rule.

Trusting you will find this to be satisfactory, and with best wishes, I am

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY COMMISSIONERS—NOT AUTHORIZED TO WITHDRAW
CERTAIN FUNDS

July 9, 1931.

Dear Mr. Amos:

Replying to your letter of the 6th instant with respect to the right of the County Commissioners of Okeechobee County to withdraw sinking funds deposited in the Guaranty Trust Company of New York for the payment of certain road bonds of that county, in order that such funds may be used to pay attorney's fees in suits contemplated by said Board, it is my opinion that this cannot be lawfully done.

Taxes were levied and this money collected for a specific purpose,—that of paying the bonds in question, and it would be a violation of the intent of the law to use it for any other purpose.

In the case of *Gary vs. Kisimmee River Cattle Company*, 85 Fla. 268, 95 So. 657, it was held that bond trustees have no authority to divert or misdirect the use or custody of funds entrusted to them as such, and this rule will be applied in the instant case.

I am returning the enclosures with your letter.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LAW OF SET-OFF—DOES NOT APPLY IN CLAIM OF BOARD
OF PUBLIC INSTRUCTION, DADE COUNTY

July 9, 1931.

Dear Mr. Amos:

I have your letter of the 2nd instant requesting an opinion as to the right of the liquidator of the Bank of Bay Biscayne to set-off against the claim of the County Board of Public Instruction of Dade County for school

funds on deposit in said bank at the time it failed, special tax school district bonds of said county.

I note from the correspondence that at the time the Bank of Bay Biscayne closed, the County Board of Public Instruction had on deposit therein approximately \$330,000 of school funds, to secure which certain bonding companies had executed their bonds in the sum of \$250,000, and the Bank of Bay Biscayne had deposited with the Comptroller securities of the par value of \$150,000. I assume that these securities were put up by the bank to qualify as a county depository.

There is attached to your letter two conflicting opinions of attorneys, as to the right of the liquidator to claim a set-off against certain of the bonds deposited by the bank to secure the deposits made by the school board.

In my opinion the law of set-off has no application in determining the point in controversy. The statute provides that banks may become county depositories upon request to the Board of County Commissioners or Board of Public Instruction, upon certain conditions, among which is that such bank shall execute and deliver to the board a surety bond issued by some surety company, duly authorized to do business in this State, or by depositing such bonds as by said Act is authorized. These securities are put up for the protection and security of funds deposited under the provisions of said Act, and when any bank or banks have qualified as such county depository or depositories, the public funds of the county are required by law to be kept in such banks.

In other words, there is no discretion on the part of county officials handling public funds as to whether such funds shall be kept in the county depositories, except that such funds shall be distributed between the different depositories.

Section 4326 of the Compiled General Laws of Florida 1927, provides "all debts or demands mutually existing between the parties at the commencement of the action, whether the same be liquidated or not, shall be proper subjects of set-off, and may be pleaded accordingly".

The words "debt" or "demand" as used in this statute mean a sum of money owing from one to another, and an obligation to pay, or a claim, which may be reduced to a money judgment. There is no debt or demand against the Board of Public Instruction, which could be reduced to a money judgment within contemplation of this statute, and therefore the law of set-off does not apply.

In other words, the securities are held to secure the deposits made, and to that extent the relation of the parties is much like that of mortgagor and mortgagee. Until the debt owing by the bank or liquidator, on account of the deposit made, is paid, the officers have the right and are required to hold said securities, and the bank or liquidator has no right to even demand the return thereof. So there could be no debt or demand mutually existing.

It is my opinion that the \$150,000 of bonds pledged should be sold, and the proceeds therefrom applied toward the payment of the amount on deposit in the bank, and that the surety company or companies should be called upon to pay the balance.

I am returning the files enclosed with your letter.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TRUST ESTATES—PRO RATA PART OF LIQUIDATOR'S
EXPENSE SHOULD BE BORNE

July 9, 1931.

Dear Mr. Amos:

I have your letter of the 2nd instant requesting an opinion on the above subject.

I have read and carefully considered the conflicting opinions on this question submitted with your letter.

Section 6105 of the Compiled General Laws of Florida provides that the expenses of a liquidator shall be paid out of the assets of the bank or trust company for which he is liquidator. This requirement is not confined to any particular class or character of assets, and I see no reason for holding that it does not apply to the cash assets as well as other assets of the bank, nor can I see any reason for holding that the expense of liquidating trusts by the bank liquidator should be paid out of that class of assets, the proceeds of which go to the common creditors of the bank.

I think it equitable and permissible under the statute that the expense of liquidation be paid from the general assets and pro-rated in such way as to make each class of claims bear its just portion of such expense, and I so hold as my opinion.

In the case of *Sorrell vs. McNally*, 94 Fla. 1174, 115 So. 540, it was held by the Supreme Court that a trust estate must bear the cost of administering it, and while the trust estate referred to in that case was not in the hands of a bank liquidator for liquidation, I see no reason why the same rule should not apply in the same situation now, under consideration.

I am returning the files enclosed with your letter.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX SALE CERTIFICATES—APPLICATION OF LAW
IN RE FORECLOSURE

July 22, 1931.

Dear Mr. Amos:

I beg to acknowledge receipt of your letter of the 18th instant enclosing letter of Hon. Roy Caruthers, Clerk of the Circuit Court of Sumter County, stating that Hon. J. C. B. Koonce, Circuit Judge, holds that tax sale certificates sold by the State under Section 42 of Chapter 14572, Acts of 1929, cannot be foreclosed due to the fact that said certificates were sold for less than the full face value of same plus accrued interest.

Hon. Roy Caruthers, Clerk, in his letter asked if there has been any ruling on this question by the Supreme Court, and you request that the matter be looked into to the end that remedial action, if necessary, by the Legislature now in session, may be taken.

Section 42 of Chapter 14572 has been construed and upheld by the Supreme Court in the case of Ridgeway, et al, vs Peacock, Clerk Circuit Court, et al, 131 So. 440, in which the Court said:

"A Sale of such certificates after the redemption period has expired, for less than the amount of the taxes stated in the certificate, is the sale of State property and does not violate the organic provision requiring 'a uniform and equal rate of taxation'".

"After the two-year period of redemption of tax sale certificates has expired, the State may sell and transfer such certificates held by it upon such terms as the law may prescribe. And no right of the owner of the land or of the taxpayers is violated, if in good faith to serve a proper State purpose and policy, the tax certificates are under the provisions of the statute sold and transferred for less than the amount of taxes represented by the certificates.

It seems clear, therefore, that no remedial legislation is necessary in this connection, and that if the certificates were sold after the two-year period of redemption had expired, all that is necessary in the particular cases referred to would be for the complainants to appeal to the Supreme Court.

Yours very truly,

CARY D. LANDIS,

Attorney General.

TAX SALE CERTIFICATES—INTERPRETATION OF LAW IN RE
FEE OF CLERK CIRCUIT COURT FOR TRANSFER
AND ASSIGNMENT

July 25, 1931

Dear Mr. Amos:

This refers to your letter of July 24th., requesting my opinion as to the construction of Section 42 of Chapter 14572, Acts of 1929. The question you submit is whether or not the fee of 25c is supposed to cover the entire

compensation of Clerks of the Circuit Court for services rendered in the sale of tax certificates. That portion of Section 42 reads as follows:

"The Clerk of the Circuit Court shall be entitled to receive from the purchaser a fee of 25c for the transfer and assignment of every certificate sold pursuant to this Section, and the same shall be in lieu of all other fees provided by law for any such sale, transfer or assignment".

It is my opinion that this is a mandatory provision so far as the charges of the Clerks of the Circuit Court are concerned, and I am clearly of the opinion that the 25c allowance is meant to be the total charge that the Clerk of the Circuit Court can make for any and all of his services in transferring and assigning each certificate sold under the terms of this Act. The law seems very plain that the Legislature intended this to be his entire charge and compensation, as the Act specifically provides that this compensation is "in lieu of all other compensation provided by law for any such sale, transfer and assignment."

I am returning you the file herewith.

Very respectfully,

CARY D. LANDIS,
Attorney General.

APPROPRIATION BILL—CONSTRUCTION OF CERTAIN PROVISIONS

July 28, 1931

Dear Mr. Amos:

This refers to your favor of July 27th., relative to appropriation bill passed at the recent session of the Legislature. You make inquiry as to the construction of the appropriation bill where it provides, for example, as follows:

"Three stenographers, \$4500.00"

Your question as I understand it being whether or not this is a limitation of each stenographer of \$1500.00.

I do not think the Act should be so construed. It is my opinion that this Act when it says, Three stenographers \$4500.00 means that the maximum number shall be three, and the maximum amount paid for all three is \$4500.00. It is my opinion that if the head of a department can get especially good stenographers at \$1800.00 each, of by the two putting in extra time can cut the total amount down to say \$3600.00, that this would be within the law. In other words, my construction is that he cannot have more than three stenographers and he cannot have an expenditure for all three of more than \$4500.00. This certainly is the only reasonable construction that can be placed upon this section of the Act.

Your next inquiry is with reference to the case where certain officers, say for example, Circuit Judges who were paid \$7500.00 under the last

appropriation bill, but were cut to \$6750.00 by the salary bill just passed, which by Section 6 takes effect July 1st., 1931, your inquiry being whether a requisition for \$625.00 should be honored for the month of July, instead of \$592.50, as provided by the salary bill. I would state that it is clearly my opinion that you should not honor a requisition for \$625.00 for the month of July, but that you should honor the requisition for \$592.50.

Construing the entire situation, and the general mechanics for handling these things, it seems to me that this is the only proper way to handle these salaries and the requisitions of other officials which are handled in like manner.

Very respectfully,

CARY D. LANDIS,
Attorney General.

MOTOR TRANSPORTATION MILEAGE ACT
MOTOR TRANSPORTATION DIVISION—MAY EXPEND
NECESSARY FUNDS FOR PROPER ADMINISTRATION
OF LAW

July 30, 1931.

Dear Mr. Amos:

This is in response to your request for an opinion with reference to the General Appropriation Bill as it affects the Motor Transport Division.

Chapter 14764, which was Senate Bill No. 411, and which became effective July 1st, 1931, provides that the State Treasurer shall credit to the Railroad Commission 10% of all moneys collected under the Act for the purpose of covering the expense of the administration and enforcement of the Act by the Commission. The Appropriation Bill with reference to the Motor Transport Division, items 23 to 27, inclusive, covers certain designated salaries and amounts and then has a general limitation on these amounts.

The question arises whether or not the Railroad Commission may employ other and additional help and expend money for other necessary purposes in the enforcement of the Act, other than the specific items mentioned in the Appropriation Bill. It is my opinion that the Appropriation Bill does not repeal Chapter 14764, and I am further of the opinion that the Railroad Commission, so long as they remain within the 10% maximum provided for in Chapter 14764, may employ other necessary help and may expend other necessary funds for the proper administration of the law.

Very respectfully,

CARY D. LANDIS,
Attorney General.

BUILDING AND LOAN ASSOCIATIONS—LAW BINDING UPON
WITHDRAWING MEMBERS

August 1, 1931.

Dear Mr. Amos:

In response to your request for an opinion as to whether the provisions of Senate Bill 92-X, Acts of 1931, approved June 6, 1931, are applicable to and binding upon withdrawing members of building and loan associations, whose notices of withdrawal were filed prior to the effective date of said Act, I beg to advise that in my opinion they are so bound.

The evident purpose and intent of the Act in question was first to protect creditors of building and loan associations, and those under contract for loans, and second, to put all withdrawing members on equal terms as to the repayment of dues paid in upon stock to be withdrawn.

Withdrawing members are stockholders and not creditors, and are bound by the provisions of the Act in question as to the payment of claims for withdrawal, whether the notice was filed prior or subsequent to the effective date of said Act.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PREFERRED CLAIM—EXTENT OF PARTICIPATION

August 4, 1931.

Dear Mr. Amos:

In response to your request for an opinion as to the extent of the participation of the above claim in funds of Lakeland State Bank & Trust Company in the hands of the liquidator, I beg to advise that the rule is clearly established by decisions of our Court, that such preferred claims participate in the cash assets of the bank coming into the hands of the liquidator, including cash in the vault together with cash of the defunct bank deposited in other banks.

Of course, such preferred claim is entitled only to participate rateably with other preferred claims of the same class and character.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—INTERPRETATION

August 18, 1931.

Dear Mr. Amos:

This is in response to your request for an opinion on that portion of Senate Bill No. 196-XX, known as the Documentary Stamp Tax Act, the paragraph of which is in question reading as follows:

"On promissory notes, non-negotiable notes, written obligations to pay money, assignment of salaries, wages, or other compensation, made, executed, delivered, sold, transferred, or assigned in the State

of Florida, and for each renewal of the same on each \$100.00 of the indebtedness or obligation evidenced thereby, 10c. Mortgages which incorporate the certificate of indebtedness, not otherwise shown in separate instruments, are subject to the same tax at the same rate."

The question being the amount of stamp tax with reference to the instruments above mentioned.

It is my opinion that two matters are involved, to-wit: the character of the instrument to bear a stamp tax, and, also the value or amount of the obligation as evidenced by such instrument.

Construing the entire Act with a view of ascertaining the intention of the Legislature, it is my opinion that each and every instrument mentioned in the above paragraph must bear a stamp. It appears to be clear that the stamp shall be in the amount of 10c or such multiple thereof, therefore, it is my opinion that each of such instruments, regardless of value must bear one 10c stamp. This would apply, in my opinion, to all notes and instruments mentioned in the above paragraph until they reach the amount of \$200.00, when there should be an added 10c stamp, and when it reaches the amount of \$300.00, there should be a third 10c stamp attached and so on as the multiple of \$100.00 of the indebtedness or obligation increases.

Very respectfully,

CARY D. LANDIS,
Attorney General.

TAX ASSESSORS—WHEN NOT ENTITLED TO COMPENSATION

August 19, 1931.

Dear Mr. Amos:

Replying to your favor of the 11th instant in which you state that a question has arisen as to whether or not County Tax Assessors are entitled to compensation for placing valuation on the tax rolls of property outstanding under State tax certificates, permit me to say this office has heretofore ruled and now holds that Tax Assessors are entitled to a commission for actual assessments of property made, and not to a commission on book entries.

Section 984, Compiled General Laws, provides that the Tax Assessors in making up their assessment rolls shall place thereon the land certified to them by the State Comptroller as having been sold to the State for taxes, and shall enter their valuations of the same on the rolls, and shall mark against such lands on the rolls the words, "State Tax Certificate." The amount of taxes on such land shall not be extended.

In the case of *Rawls vs. State ex rel Nolan*, 98 Fla. 103, 122 So. 222, the Supreme Court of Florida said:

"Public officers have no legal claim for official services rendered except when and to the extent that compensation is provided by law. And

when no compensation is so provided, rendition of such services is deemed to be gratuitous."

Section 1028, Compiled General Laws, provides that the County Assessor of Taxes shall be entitled to receive commissions upon the amount of taxes, general or special, assessed.

In view of the Sections of law and the Supreme Court opinions above quoted, it is my opinion that County Tax Assessors are not entitled to compensation for placing upon the assessment rolls lands certified to them by the State Comptroller as having been sold to the State for taxes.

Trusting you will find this to be satisfactory, and with best wishes,

I am

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX ASSESSMENTS—RE PROPERTY ST. JOHNS TERMINAL CO.,
DUVAL COUNTY

August 24, 1931.

Dear Mr. Amos:

Referring to your favor of the 19th instant, requesting opinion as to tax assessment to be made on certain property in Jacksonville belonging to the St. Johns Terminal Company.

It is my understanding that certain real estate belonging to this company has been leased to certain oil companies. These oil companies have made improvements thereon by building tanks, etc., and such buildings as may be necessary for the operation of that particular business with definite clauses in the lease whereby this property is by all parties considered personal property, and the oil companies have the right to remove the same at their will. I understand further that the St. Johns River Terminal Company has made a tax return for the real estate, and that the oil companies have made a similar return for the improvements.

The facts being as above set forth, it is my opinion that it would be right and proper under the law for the Tax Assessor to assess the real estate separately to the St. Johns River Terminal Company and the improvements which the oil companies have upon the property as personal property to the oil companies.

This business is somewhat different from the ordinary improvements placed upon real estate by a tenant, and while my opinion as above set forth covers the situation as above stated, I do not think this same rule would apply to the ordinary improvements placed upon real estate by a tenant.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

JUSTICES OF THE SUPREME COURT—SALARIES

August 26, 1931.

Dear Mr. Amos:

Honorable R. A. Buford, Chief Justice of the Supreme Court of Florida, has called at my office this morning and has shown me your letter to him under date of August 25, 1931, relative to the monthly requisition which you requested him to make for the month of August and succeeding months.

The members of the Supreme Court under the old salary Act, to-wit: Chapter 12070 of the Acts of 1927, were entitled to an annual salary of \$9,600.00. This Act was a general law and carried an annual appropriation which by its terms and under the decision of our Supreme Court was a continuing appropriation. This Act was not modified or amended in any way until the recent salary Act enacted into law at the Special Session of the Legislature, and which was known as Senate Bill No. 54-XX. In this Bill No. 54-XX the salary of the several Justices of the Supreme Court was fixed at \$8,500.00 per annum. Section 4 of this Act has this language in it, to-wit: .

"But it is expressly provided that all sums which have been expended by virtue and under authority of the Special Emergency Appropriation Bill of the First Extraordinary Session of the Legislature of 1931, shall be deducted from the appropriation herein set forth in Section 1, and shall not be considered additional appropriations thereto."

The Chief Justice advises me, and states that the other members of the Court concur in the opinion, that the payment of the salary to the Supreme Court Justices made for the month of July was a payment made under the general salary appropriation for these officers as provided for in Chapter 12070, Laws of Florida, Acts of 1927, and not under the "Special Emergency Appropriation Bill."

This it is that the July salaries having been paid under a General Appropriation Law, the payment of the remaining eleven months' salary of the Justices of the Supreme Court does not fall within the limitations placed upon the payment of their salary by Section 4 of Senate Bill No. 54-XX, and accordingly the Justices of the Supreme Court, under the law, should be paid for each of the eleven months remaining of the fiscal year beginning August 1, 1931, at the rate of one-twelfth of \$8,500.00 each month. This same rule will likewise apply to the salary of the Governor and all other State officials where their salaries were fixed by General Law which carried with it an appropriation and which in the very nature of the law would and does constitute a continuing appropriation.

Very respectfully,

CARY D. LANDIS,
Attorney General.

DELINQUENT TAXES—CONSTRUCTION OF STATUTES,
IN RE REDEMPTION

September 24, 1931.

My Dear Mr. Amos:

Some confusion has arisen with reference to the redemption of delinquent taxes, and whether or not Section 997 of the Compiled General Laws of 1927 is operative in conjunction with what is known as the Gomez Bill or Senate Bill No. 12-XX. It is my opinion that these two laws are operative together.

A specific question has arisen as follows:

Where there are delinquent taxes for the years 1928, 1929 and 1930, a redemption can be made under the Gomez Bill, taking as a basis for the redemption under Section 997 of the Compiled General Laws of 1927, the valuation as made for the year 1931, it being the lowest valuation.

It is my opinion that, construing these laws together when the valuation for the year 1931 has been equalized, and as equalized adopted by the Board of County Commissioners, then such valuation may be used as the basis for the redemption of the taxes for the years 1928, 1929 and 1930, provided it is the lowest valuation. Thus it is that if the redemption is made after the 1931 valuation has been adopted by the Board of County Commissioners, this being the lowest valuation, that then redemption may be made under the Gomez Act prior to November first without the payment of the 1931 taxes.

Under the Gomez Act, it is my opinion that the eight per cent (8%) interest shall be figured only from the date the Gomez Act takes effect to the date of redemption.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—WHEN REQUIRED OF MUTUAL
BUILDING AND LOAN ASSOCIATIONS

October 13, 1931.

Dear Mr. Amos:

Replying to your recent inquiry relative to the above subject, I beg to advise as follows:

Investing Members—Subscription To Installment Stock. The third paragraph of Schedule A of Senate Bill No. 196-XX requires documentary stamps on all agreements to sell shares of stock. An agreement to purchase is likewise an agreement to sell, because the minds of the seller and purchaser must meet in order to constitute an agreement, and there cannot be an agreement to purchase without a corresponding agreement on the part of the seller to sell.

It is my opinion therefore, that the agreement to purchase stock must bear the documentary stamp at the rate provided by the Act.

Borrowing Members. When a mutual building and loan association grants a loan, for which notes are executed and in addition thereto the borrower is required to subscribe to stock of the association, it is my opinion that stamps are required on both the notes and stock subscription.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MOTOR HIGHWAY CARRIER MILEAGE TAX ACT—RAILROAD
COMMISSION PROPER PARTY TO ENFORCE

February 4, 1931.

Dear Mr. Amos:

This refers to your favor of the 22nd ultimo enclosing letter from Milam, McIlvaine & Milam, relative to Chapter 14764, Acts of 1931, Motor Highway Carrier Mileage Taxes, the question under consideration being whether or not I concur in the opinion rendered by Milam, McIlvaine & Milam to the effect that it is your duty to enforce the provisions of the above mentioned chapter.

I would state that I do not concur in the opinion so rendered. It is my opinion that the Chapter prescribes certain duties upon your office, such as prescribing the records to be kept and the collection of the tax according to such returns, and the keeping of separate accounts of moneys collected under the Act, etc., but in reading Section 17, of the Act, it seems to me clear that the enforcement of the Act is left to the State Railroad Commission, for in that Section the following wording is specifically used:

"The State Treasurer shall credit the Railroad Commission Fund with 10% of all the moneys so collected and paid to them to cover the expense of the administration and enforcement of this Act by the said Commission."

In so far as the actual enforcement of the Act is concerned, it seems to me to be clearly the duty of the Railroad Commission.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CHAIN STORES LICENSE TAX, PENALTY APPLIES
TO YEARS 1931-1932

November 6, 1931.

Dear Mr. Amos:

I am in receipt of your letter of the 3rd instant, requesting my opinion concerning Chapter 15,624, Laws of Florida, Acts of 1931, with reference to license tax on stores. I note your inquiry as to whether the 25% penalty applies to the 1931-1932 license year or only to subsequent years.

The above mentioned chapter became effective on July 3, 1931. By reference to Section 4 of said Chapter, I find this language:

*** "No license shall lapse prior to the 31st day of October of the year next following the year in which such license was issued, and if by such 31st day of October an application for renewal license has not been filed, the Tax Collector or Comptroller, as the case may be, shall notify such delinquent license holder thereof by registered mail, and if application is not made for a renewal license on or before the 10th day of November, next ensuing, the Tax Collector or Comptroller, as the case may be, must collect, in addition to the license fee hereinafter provided, twenty-five per cent of the license tax provided in this Act before issuing the licenses." ***

You will note the above quotation from the statute makes no distinction between the present and subsequent years. Neither do I find any such distinction in any other part of the Act. It is, therefore, my opinion that the penalty provided in said Act applies to the 1931-1932 license year as well as subsequent license years.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COURT REPORTER—PAYMENT OF SALARY IN CERTAIN CASES

November 7, 1931.

Dear Mr. Amos:

I am in receipt of your letter of the 3rd instant, transmitting a letter from Hon. J. C. B. Koonce, Judge of the Sixteenth Judicial Circuit, with reference to an Acting Court Reporter appointed by him in the absence of the regular Court Reporter and requesting advice as to the payment of salary of the Acting Reporter.

Sections 4872 to 4880, Compiled General Laws of Florida, 1927, provide for the appointment by the Governor of Court Reporters, naming their duties and compensation. Section 4879, Compiled General Laws of Florida, also provides for *Special Reporters* in case any Official Reporter shall not have been appointed in any Circuit or where the Official Reporter is disqualified or unable to perform his duties, and provides that it shall be within the discretion of the judge to appoint a *Special Reporter* in any case, civil or criminal, upon demand of any of the parties therefor and that said *Special Reporter* shall perform the same services and receive the same pay in the same manner as the Official Reporter.

By reference to Chapter 15,719, Laws of Florida, Acts of 1931, (page 1195) we find that the General Appropriation Bill contains only the following language relative to Court Reporters:

"28 Court Reporters at \$1500.00—\$42,000.00"

It is apparent that the 1931 Legislature by use of the foregoing language in the General Appropriation Bill made provision for Court Reporters only so far as payment by the State is concerned and did not make any provision for payment by the State of *Special Reporters*.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP ACT—CONSTRUCTION

November 9, 1931.

Dear Mr. Amos:

I am in receipt of your letter of the 3rd instant, involving the construction of Chapter 15,787, Laws of Florida, Acts of 1931, commonly termed the "Documentary Stamp Act". You quoted the following paragraph from a letter written by you to The Federal Land Bank of Columbia, South Carolina:

"Under said provisions of the law the liability and responsibility for affixing the documentary stamps on all documents covered by the Act first above referred to is placed on the person, firm, or corporation that executed the instrument or document or paper or note as the case may be."

The primary obligation and responsibility for affixing such documentary stamps would appear to rest on the person, firm or corporation executing such documents, however, Section 4 undertakes to penalize any one accepting such documents without such stamps.

From the correspondence attached to your letter the above mentioned Federal Land Bank makes inquiry as to whether or not such documentary stamps are required on:

1. Mortgages to Federal Land Bank.
2. Notes to Federal Land Banks.
3. Master's Deeds to Federal Land Banks pursuant to mortgage foreclosures.

Your position that the above mentioned documents should contain such documentary stamps for the reason that the liability is upon the maker of the same and not upon the Federal Land Bank is a natural and reasonable construction and would appear to be correct but for the provisions of Section 26 of the Farm Loan Act of July 17, 1916, being Section 931 of Title 12, United States Code Annotated, in which we find the following language:

"First mortgages executed to Federal Land Banks, or to Joint-Stock Land Banks, and Farm Loan Bonds executed under the provisions of this Chapter, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, Municipal and local taxation."

Under the above quoted Federal statute and the ruling of the Supreme Court in the case of Federal Land Bank of New Orleans vs. D. W. Crossland, 67 Law Ed. 703, it appears that mortgages to Federal Land Banks are exempt from the documentary stamp tax provided for in Chapter 15,787, Laws of Florida, Acts of 1931.

Under the reasoning of the United States Supreme Court in the case of Thames & Mersey Marine Insurance Co., vs. U. S., it would also appear that notes to the Federal Land Bank, as well as Master's Deeds (as a result of mortgage foreclosure) would also be exempt in that they are so vitally connected with the mortgage that the tax on such instruments would be essentially a tax upon the mortgage itself.

I have the honor, therefore, to advise that in my opinion Chapter 15,737, Laws of Florida, Acts of 1931, the "Documentary Stamp Act," does not apply to mortgages executed to Federal Land Banks or to Farm Loan notes executed to such banks, or to Master's Deeds in favor of such banks as a result of mortgage foreclosures.

Your correspondence attached to your inquiry is herewith returned.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CHAIN STORE ACT—SUBSEQUENT LAW REPEALED

Sept. 24, 1931.

My Dear Mr. Amos:

This is in response to your request for an opinion as to whether or not Committee Substitute for House Bill No. 8-X, fixing license upon the operation, maintenance, etc., of stores in the State of Florida repeals Section 1197 of the Compiled General Laws of Florida, 1927.

I would state, that in my opinion, the new law, or House Bill No. 8-X unquestionably repeals Section 1187 of the Compiled General Laws and stores should be taxed under the new law and not under the old law.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BUILDING AND LOAN ASSOCIATIONS—INTERPRETATIONS OF LAW

December 2, 1931.

Dear Mr. Amos:

This refers to your favor of November 5th and pertains to the interpretation of the amendment to the building and loan law passed at the last session of the Legislature, known as Senate Bill No. 92-X, to-wit: Chapter 15605, Acts of 1931. The question presented is whether or not where a building and loan association has doubtful assets exceeding 20% of its total

assets can have an appraisement made of all of the property of the company, and thus determine the value of the stock of the Company, and then have a separate appraisal made of its different items of real estate and when this is done, if any of the owners of the stock are willing, that they be allowed to trade their stock, so to speak, at the appraised value, for a piece or parcel of the company's property at the appraised value.

This method of liquidating raises the question squarely as to whether or not such a transaction does not violate that portion of the amendment which reads as follows:

"Third, that any association whose doubtful assets exceed 20% of the total assets shall allow no withdrawing member or members priority over the remaining members but shall make a quarterly distribution of the net cash receipts to all members on the same percentage basis as if each member had filed a written notice of withdrawal, and such distribution shall be continued until the association is finally liquidated or until the losses are adjusted by a pro rata charge to the account of each member or by impounding the earnings until the stock is restored to par, following which the association may resume its functions as a going concern, upon the approval of the State Comptroller."

It is my opinion, that the transaction as above outlined is a violation of the above mentioned amendment and is not permissible. In other words, when a stockholder exchanges his stock for a piece of property, while it may be true that he will receive thereby no greater per cent of the par value of the stock than any other stockholder will, yet it is a priority in the sense than when a trade is made, he gets from the company all of the value of the transaction, whereas, the amendment seems to indicate clearly that when any value comes to a transaction of the company, that there must be quarterly distribution to all members and that there shall be no priority, and that such equal distribution to all stockholders shall be continued until the association is finally liquidated. Thus it is, that it is my opinion, that such transaction as above mentioned is a violation of the Building and Loan Act.

Very respectfully,

CARY D. LANDIS,
Attorney General

DOMESTIC CORPORATIONS—WHEN WAIVER OF CLAIMS FOR
TAXES ON STOCK OWNED BY NON-RESIDENT
DECEDENTS SHOULD ISSUE

December 16, 1931.

Dear Mr. Amos:

Replying to your favor of the 9th instant relative to requests for waiver by the State of Florida of claims for taxes on stock owned in domestic corporations by non-resident decedents, permit me to say:

Chapter 15747, Acts of 1931, reads as follows:

"Section 1. The tax imposed under the Inheritance and Estate Tax Law of this State in respect of personal property (except tangible personal property having an actual situs in this State) shall not be payable (a) if the transferor at the time of his death was a resident of a state or territory of the United States, or the District of Columbia, which at the time of his death did not impose a death tax of any character in respect of property of residents of this State (except tangible personal property having an actual situs in such state, territory or district), or (b) if the laws of the State, territory or district of the residence of the transferor at the time of his death contained a reciprocal exemption provision under which non-residents were exempted from said death taxes of every character in respect of personal property (except tangible personal property having an actual situs therein), and provided that the state, territory or district of the residence of such non-resident decedent allowed a similar exemption to residents of the state, territory or district of residence of such decedent."

I note that you observe that Section 3, subdivision 4, of Chapter 14739, which is the Inheritance and Estate Tax Act of 1931, provides that "stock in a domestic corporation owned and held by a non-resident decedent shall be deemed property within the State of Florida", and that you are under the impression, after reading the entire Section, that stock in a domestic corporation is by said subdivision 4 "taken out of the class of intangibles and is due the State of Florida a tax before a transfer is made."

Permit me to say that while subdivision 4 of Section 3 of Chapter 14739 declares the stock of a domestic corporation owned and held by a non-resident decedent to be property within the State of Florida, such stock is nevertheless intangible personal property and is subject to taxation only as such. Therefore, if a non-resident decedent owning stock in a Florida corporation was at the time of his death a resident of a State having a statute containing the same reciprocal provisions as Chapter 15747, Acts of 1931, Laws of Florida, the payment of a tax on the stock held by such non-resident decedent in a Florida corporation would not be a condition precedent to the transfer thereof, and the waiver should therefore be issued in the instant and in like cases.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAXES—STATE AND COUNTY—MAY BE ACCEPTED WHEN
EVERGLADES DRAINING TAXES NOT PROFFERED

January 1, 1932.

Dear Mr. Amos:

Inquiry having been received from the Tax Collector of Martin County on the question of whether or not State and county taxes proffered by a taxpayer may be accepted, where the taxpayer declines to pay the Everglades Draining Tax assessed against the same lands, I am addressing this opinion

to you for the reason that you may receive inquiries from tax collectors of other counties on the same subject. It is my opinion that such taxes may be accepted, and state the following reasons for this holding.

(1) The title to Chapter 14717, Acts of 1931, on the subject of taxation, relates solely to Everglades Drainage District Taxes, and State, county and other taxes are not mentioned in said Title. Therefore, the provision in Section 53 of said Chapter, providing that the Tax Collector shall not receive the payment of other taxes imposed upon lands which drainage taxes are also imposed, without requiring the payment of such drainage taxes, is void.

(2) Section 1 of Article IX of the Constitution of the State of Florida requires the Legislature to provide for a uniform and equal rate of taxation, and requires the Legislature to prescribe such regulations as shall secure a just valuation of all property both real and personal.

Section 2 of Article IX requires the Legislature to provide for raising revenue sufficient to defray the expenses of the State for each fiscal year.

Section 5 of Article IX requires the Legislature to authorize the several counties to assess and impose taxes for county purposes.

Chapter 15786, Acts of 1931, in Section 1 thereof, reads as follows:

"There shall be levied annually upon the real and personal property assessed for taxes within the several counties of the State for the purposes hereafter set forth as follows:

"A constitutional school tax of one mill on the dollar on all property within the State as aforesaid."

Section 2 of said Chapter authorizes the board of county commissioners of the several counties of the State to levy annually a tax upon the real and personal uroperty of the county for purposes mentioned, as follows:

For General Fund not more than eight mills on the dollar.

For Fine and Forfeiture Fund not more than three mills on the dollar.

For General Road and Bridge Fund not more than ten mills on the dollar.

For General County School Fund not less than three nor more than ten mills on the dollar.

For Agriculture and Live Stock Fund not more than one-half mill on the dollar.

For Outstanding Indebtedness Fund not more than is necessary to pay such indebtedness and the interest thereon.

And the said Chapter further provides that nothing therein shall be construed to prohibit any county wishing to erect a courthouse or a jail from levying the amount of special taxes now allowed by law for such purposes, or to prohibit the levying of any school tax district taxes authorized by law, or a tax for interest and sinking fund for bonds or other taxes authorized by any general or special law.

Pursuant to Chapter 15786, Acts of 1931, the county commissioners of the several counties of the State in due course levied a one mill tax on the

dollar on all property in the county for the constitutional school tax and levied a millage for the several county funds of said counties.

It is evident from the constitutional and statutory provisions above quoted that the constitutional school tax of one mill and the county tax authorized by the Legislature in conformity to the mandatory provisions of the Constitution are prior in dignity to the Everglades Drainage Tax levied for special purpose.

To hold that the tax collector might refuse to accept the State and county tax levied pursuant to the Constitution and statutory authority, because of the fact that a taxpayer refused to pay a special drainage tax on the lands involved, would be contrary to the provisions of the Constitution providing for the assessment and collection of State and county taxes for the support of the State and county Government, and might result in litigation which would defer the payment of State and county taxes to such extent as to impair the proper administration of the State and county government.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DELINQUENT TAX LIST—AMOUNT ALLOWED TO BE
CHARGED FOR PRINTING

January 16, 1932.

Dear Mr. Amos:

I have a letter before me from Mr. Wm. J. Placie, Publisher of Tampa Life.

If I understand this situation, the question arises over the charge for the head-notes and the single line running across the top of each page showing the description of the land, the name of the owner and total tax and expense. It seems to me that the statute is very clear with reference to the head-notes. By reference to Section 969 of the Compiled General Laws it will be seen that it is specifically provided that there shall be no charge for headnotes. Considering the statutes in general, it seems to me that it is clearly the intention of the Legislature that there shall be no charge for the head lines at the top of the page which gives an index of the description of the land, etc., for the reason that the law provides 15c per line single column or 30c per line double column for publishing the tax sale advertisement, and this amount is chargeable to the taxpayer and that is all that can be charged against him, and the intent of the law appears clearly to be that this is the total amount that can be charged for tax sale advertisements.

Very respectfully,

CARY D. LANDIS,
Attorney General.

MOTOR TRANSPORTATION MILEAGE TAX ACT—COMPTROLLER
AUTHORIZED TO APPOINT AGENTS TO ENFORCE

January 22, 1932.

Dear Mr. Amos:

Answering your request for my opinion as to your authority to appoint auditors to examine and audit the records kept by holders of certificates or permits under this Act, and to pay them reasonable fees for their services and traveling expenses, I beg to state that after very carefully considering the entire chapter, I have reached the conclusion that you are authorized and warranted to appoint such auditors or inspectors, as may be necessary to enforce the collection of the mileage tax required to be paid under the terms of this Act; and that you are authorized and warranted, under the law, to pay such persons reasonable salaries and their necessary expenses.

Section 16 of the above named chapter provides that you, as Comptroller of the State, shall collect from every automobile transportation company, as is defined in the Act and to which there has been granted a certificate of public convenience and necessity or permit, certain taxes enumerated and set forth in the Act.

This same section of the Act provides that in order to ascertain the bus mileage, etc., and the truck mileage traveled by such holders of certificates or permits, you shall prescribe records to be kept by the holders of such certificates or permits. The Act then further provides in the latter part of Section 16 "that the books and records of all auto transportation companies shall be at all times open to inspection of the Comptroller of the State and of the Commission, or any agent by them appointed for such purpose." Section 17 provides as follows: "It shall be the duty of the Comptroller of the State to keep a separate account of all monies collected under this Act and any and all monies so collected *after deducting the necessary expenses incurred by the Comptroller of the State* in carrying out the provisions of this Act shall be paid to the State Treasurer monthly."

These provisions of the Act, in my opinion, fully authorize and warrant you to appoint such agents, auditors or persons necessary to reasonably enforce this Act; and their reasonable salaries and necessary expenses are fully authorized to be paid by you.

There are also certain administrative duties and enforcement requirements placed upon the State Railroad Commission, but the act specifically provides for a ten per cent (10%) fund to be credited to the Railroad Commission to cover these expenses. The monies turned over to the Treasurer, out of which the ten per cent (10%) is credited to the Railroad Commission, are the monies in hand, after the necessary expenses incurred by yourself as Comptroller are first deducted.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

STOCKHOLDERS—WHEN STATUTE OF LIMITATIONS
BEGINS TO RUN

February 3, 1932.

Dear Mr. Amos:

Replying to your favor of the 1st instant in which you request my opinion regarding whether or not the Statute of Limitations runs against a receiver or liquidator of a closed State bank under the statute authorizing the Comptroller to assess stockholders equally and ratably in the liquidation of such bank, permit me to say:

It is my opinion that the liability of a stockholder attaches at the time he becomes owner of the stock, and continues until the affairs of the bank are wound up or until the liability has been discharged as provided by statute or by judicial decree.

The statute authorizes the Comptroller to assess stockholders equally and ratably in the liquidation of a closed State bank to the extent of the amount of the stock therein at the par value thereof, in addition to the amount invested in such shares.

The doctrine is settled that the liability of stockholders in a banking company for its obligations is primarily contractual, and any acquisition of the stock implies assent of the owner to the statutory conditions under which the corporation was organized.

See *McNeill vs. Pace*, 69 Fla. 349, 68 So. 177;

Bryan vs. Bullock, 84 Fla. 179, 93 So. 182;

Richmond vs. Iron, 121 U. S. 27;

Carrol vs. Green, 92 U. S. 509.

It is my opinion that a cause of action against a stockholder does not accrue until the Comptroller has levied an assessment equally and ratably upon the stockholders, that when the assessment has been levied the Statute of Limitations then begins to run.

The liability of the stockholders being one created by statute, it is my opinion that action must be begun within three years after the assessment has been levied by the Comptroller, or it would be barred by the statute of limitations. See Section 4663, Compiled General Laws.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE BANK—AUTHORIZED TO LIMIT WITHDRAWALS
BY DEPOSITORS

February 8, 1932.

Dear Mr. Amos:

Chapter 14647 authorizes any State bank with the permission of the Comptroller to limit withdrawals by its depositors to the amount of 20% of the deposit of the individual depositor in cases where such bank senses a run. The matter of granting permission to so limit withdrawals is left to

the discretion of the Comptroller to grant or withhold, but when such permission is granted and withdrawals are limited in accordance with the provisions of said Act, it is thereupon the duty of the Comptroller to immediately dispatch to such bank an examiner, who under the Comptroller's supervision shall examine into the affairs of the bank to determine its solvency.

If it shall appear to the Comptroller upon such examination that the said bank is solvent, he shall so declare to the public, and the bank shall thereafter be permitted to continue to limit withdrawals for a period not to exceed ninety days, and this limitation applies only to deposits made with the bank prior to such limitation.

Thereupon, such bank shall cease to make loans during the period of such limitations, and shall immediately upon placing such limited liability in force collect its loans and marshal its assets under the direction of the Comptroller, and prepare to meet its obligations to its depositors in full.

The construction to be placed upon this provision is that the bank continues to operate as a going concern in all respects, except as to said limited liability as to withdrawals, and except that it cannot during said period make any further loans, but must collect the loans outstanding and marshal its assets in order to meet its obligations to its depositors.

In other words, the Comptroller does not actually take over the affairs of the bank, but has supervision over the continued operation of the bank and particularly with reference to collecting the loans and marshalling of its assets, and to see that no further loans are made during the said limitation period.

I am of the opinion that a party indebted to a bank at the time such bank limits the withdrawal of deposits, but who had no deposit in the bank at the time of such limitation could not procure assignment of claims against the bank by other depositors and off-set the same against his obligation to the bank. The purpose of the Act is to limit withdrawals of deposits to 20% of the deposits of the persons, firms or corporations comprising its depositors, the primary purpose of which is to save the bank from threatened insolvency by reason of runs, and the ultimate purpose is evidently to protect the depositors.

To permit some depositors to assign their deposits to be set-off against debts due the bank would be permitting a thing to be done indirectly which could not be done directly, by allowing some of its depositors in this way to withdraw all their deposits where others were permitted to withdraw only 20%. I believe such practice would be in violation of both the spirit and letter of Chapter 14647.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAXES, STATE AND COUNTY—WHEN LANDS IN EVERGLADES
DRAINAGE DISTRICT SUBJECT TO

February 10, 1932

Dear Mr. Amos:

Replying to your request for an opinion on the question stated in your letter of Hon. Hurd L. Reeves, Tax Assessor of Hendry County, dated February 3, 1932, as to whether lands situated in the Everglades Drainage District are subject to State and county taxation, where there are outstanding drainage tax certificates against the same, but no State and county tax certificates, my answer is in the affirmative.

To illustrate the point, let it be supposed that the same piece of land is sold for drainage tax and State and county taxes, all for the same year, and tax certificates issued accordingly. Thereafter, the State tax certificate is redeemed, but the drainage tax certificate is not redeemed. In that case, upon the redemption or sale of the State tax certificate, the land should from that time be assessed for State and county taxes, notwithstanding the fact that a drainage tax certificate is outstanding against the same.

This does not apply, however, to lands owned by the State, the title to which is vested by law in the Trustees of the Internal Improvement Fund, as such land is not subject to State and county taxes.

I am returning file submitted.

Trusting this fully answers your question, I am

Yours very truly,

CARY D. LANDIS,
Attorney General.

GASOLINE TAX—WHEN SPECIAL TAXING DISTRICTS ARE
ENTITLED TO THEIR PRO-RATA SHARE

February 18, 1932.

Dear Mr. Amos:

At your request I beg to advise that certain of the gas tax funds were by Chapter 15659, Acts of 1931, appropriated for payment to the counties to reimburse the counties and/or special road and bridge districts or other special taxing districts of such counties for contributions made by the counties and/or special road and bridge districts or other special taxing districts in the construction of roads designated by the Legislature as a part of the system of State roads prior to the enactment of said Chapter. These particular funds are by the Act payable to the county, but they are in payment of the amounts found by the machinery set up in said Act to be due the several counties and/or special road and bridge districts or other special taxing districts, which have contributed to the construction of the designated State roads.

Therefore, the special road and bridge districts or other special taxing districts contributing thereto are entitled to their pro-rata share of the funds payable to the county in which they are located, based upon the contribution of such special road and bridge districts or other special taxing districts in the construction of such State roads.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX REDEMPTION—CONSTRUCTION OF STATUTES

February 18, 1932.

Dear Sir:

Replying to your letter of the 13th instant, to which is attached letter of Hon. Roy A. O'Bannon, Tax Collector of Palm Beach County, dated February 10th, 1932, I beg to advise that the only change made in Chapter 15055 from the statute theretofore applicable is that under Chapter 15055 a person redeeming land from tax sale certificates is not required to pay the taxes for the current year in which the redemption is made provided the same is made prior to November 1st. This Act does not change the law which requires the description of the property to be carried on the assessment roll, and under the law the taxes are assessed and all that is left to be done is to extend the taxes at the time the same is paid.

In other words, if redemption is made prior to November 1st, the taxes for that year would be due on November the 1st, and would become delinquent April 1st as any other ad valorem taxes become delinquent, and the same rule for determining the amount of the taxes for the year in which redemption is made obtains as it existed prior to the enactment of Chapter 15055.

In other words, the tax collector does not make the assessment in such cases, but merely determines under the same rule of law that was in force prior to the enactment of Chapter 15055 the taxes due for the current year, and if the same is not paid by April 1st, the property is sold for non-payment of taxes in like manner as if the property had been assessed for the previous year.

Section 925 of the Compiled General Laws of Florida 1927 applies only in cases where taxes have not been lawfully assessed and collected for any given year within a period of three years, or where the cause of litigation ensues and the assessment is held invalid, in which case it is made the duty of the assessor to back-assess for such year or years not exceeding three years previous to the year in which such back-assessment is made.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INHERITANCE OR ESTATE TAXES—CONSTRUCTION OF LAW

February 18, 1932.

Dear Mr. Amos:

The purpose of Chapter 15746, Acts of 1931, is to recover back from the Federal Treasury for the State of Florida that portion of the Federal Estate tax made available by credit or refund provisions under the Federal Revenue Acts of 1924, 1926 and 1928 to the extent of 25% of the Federal Estate Tax imposed on the estate of every decedent dying as a resident of the State of Florida during the time when under the Federal Inheritance Tax Law a 25% credit or refund was available and a tax of 80% of the Federal Estate Tax imposed on the estate of every decedent dying a resident of the State of Florida during the time when under the Federal Inheritance Tax Law 80% credit or refund is available.

Section 301 (b) of the Revenue Act of 1926, being Section 1093 of Title 26, U. S. C. A., allows a credit against the Federal Estate Tax on account of any estate, inheritance, legacy or succession taxes actually paid to any State or territory, or the District of Columbia, in respect of any property included in the gross estate. The credit allowed by said Act is to the extent of 80% of the Act imposed by the Federal Government, and includes only such taxes actually paid to any State, territory, or the District of Columbia as in said Act provided.

Prior to the adoption of the amendment to Section 11 of Article IX of the Constitution of Florida at the General Election in November of 1930, Florida was forbidden to levy any tax upon inheritances.

Therefore, no inheritance or estate taxes could have been actually paid to the State of Florida prior to the adoption of the amendment to Section 11 of Article IX of the Constitution, and the provisions of Section 301 (b) of the Federal Revenue Act of 1926 could not apply to taxes theretofore paid to the Federal Government.

It is my opinion, therefore, that the provisions of Chapter 15746 cannot be enforced against the Federal Government.

Yours very truly,

CARY D. LANDIS,
Attorney General.MOTOR TRANSPORTATION MILEAGE ACT—APPLICATION
IN RE MILEAGE TAX ON TRUCKS AND BUSES

February 26, 1932.

Dear Mr. Amos:

This refers to your favor of the 8th. instant in which you request my opinion on three separate questions relative to motor transportation as governed by Chapter 14764, Acts of 1931. First you ask the question, "whether or not the mileage by motor vehicles of auto transportation companies shall include the distance covered by said vehicles while passing through towns

and cities along their route from point of beginning to destination in their routes".

It is my opinion that the mileage tax on buses and trucks should be based upon the number of miles travelled from point of beginning to destination, and that no deduction should be made for distance travelled through incorporated municipalities.

Your second question is: "Whether or not the load capacity" of trucks and trailers shall be based upon the load actually carried or whether the same shall be based upon the manufacturer's figures on the amount of load the trucks were built to carry. In other words, a truck of a factory load capacity of 5500 pounds can be loaded to a much greater capacity, so I am told. The question is whether the mileage tax should be computed on the factory rated load capacity or the amount of the load placed on the vehicle by the operators".

In reply to this question, I would state that Chapter 14764 uses the terms "load weight", "vehicle weight" and "load capacity". Considering each of these terms in relation to the manner in which they are used in the Act, it is my opinion that the mileage tax should be computed on the "load capacity", and that the practical determination of the load capacity is the factory rated load capacity. I am of the opinion that the Legislature had the factory rated load capacity in mind to use as a yard-stick for the measuring of the mileage tax. Further, it seems to me, that this is the only practical construction that can be placed upon the Act so as to make the Act workable.

Your third question is: "Whether or not a relief bus or truck sent out as a special to pick up a load or dead head the truck or bus in on a run where the machine on the regular run has broken down. Or, in other words, where the bus or truck has broken down on its regular run and a special machine is sent out to finish the run or bring in the load, whether or not both trucks, or buses, shall be charged with the mileage covered by the special trip".

It is my opinion that both trucks or buses, under these conditions, should be charged with the mileage covered by the special trip, for the reason that the Act provides that the mileage tax "for every mile traveled by the motor vehicle, etc.," shall be collected.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

INHERITANCE OR ESTATE TAXES—COMMISSIONER OF
REVENUE ENTITLED TO COSTS AND EXPENSES

February 29, 1932.

Dear Mr. Amos:

Replying to your letter of the 25th instant, I beg to advise that Section 42 of Chapter 14739, Laws of Florida, Acts of 1931, not only contemplates, but specifically provides for the payment of all costs and expenses incurred

by you acting as Commission of Revenue in the enforcement of the law relating to the levy and collection of inheritance and estate taxes.

The law makes it the duty of the county judges to make periodical reports, and in my opinion this is an expense contemplated by Section 42 of the Act. There being no provision made in the Act as to the amount of compensation to be allowed, it would be proper to determine same on the basis of fees allowed by other statutes for like services.

Your very truly,

CARY D. LANDIS,
Attorney General.

MOTOR TRANSPORTATION MILEAGE ACT—CONSTRUCTION
IN RE TRAVEL BUREAUS

March 1, 1932.

Dear Mr. Amos:

This refers to your favor of February 26, relative to so-called "Travel Bureaus," under provisions of Chapter 14764.

I note that these bureaus seem to have schemes whereby the bureau gets certain portions of the transportation fee and the owner of the vehicle gets the remainder. I take it that the fee going to the bureau is for collecting the passengers. If the bureau owns the automobile, or if it does not, if it is organized for running certain automobiles back and forth over the roads, it seems to me that a mileage tax should be collected. As a practical proposition, I imagine it will be a difficult matter to obtain the proper proof to convict these people; and, in addition to that, under Chapter 14764, it is my opinion that the enforcement of this act to the point where a certificate of public convenience and necessity or permit authorizing it to engage in the transportation of passengers or freight, or both, is vested in and falls upon the Railroad Commission and the enforcement officers of the State and not upon your office. The wording of Section 16 of the Act seems to place the duty upon the Comptroller only when a certificate of public convenience and necessity or permit authorizing it to engage in the transportation of passengers or freight, or both, has been granted.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BANKS, STATE—MAY REDISCOUNT ITS PAPER OR
BORROW MONEY

March 5, 1932.

Dear Mr. Amos:

This refers to your request this day made for my opinion as to whether or not any State Bank in the State of Florida that has, with your permission as Comptroller, limited its withdrawal by its depositors to the amount of 20% of the amount deposited, in accordance with Chapter 14647, Laws of

Florida, Acts of 1931, may during such period of limitation of withdrawals, rediscount its paper or borrow money from other banks in the usual course of business for the carrying on and continuation of its banking business.

In reply to this, I would state that it is my opinion that under the conditions as above stated any State bank may rediscount its paper or borrow money from other banks for the carrying on of its business as a bank.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

GASOLINE TAX—WHEN STATE EXEMPT FROM PAYMENT

March 17, 1932.

Dear Mr. Amos:

It is my opinion that gasoline or other like products of petroleum purchased by the State for the use of the State in the performance of its governmental functions is not subject to the tax imposed upon the sale or storage of gasoline or other like products of petroleum in the State of Florida. It must be understood, however, that this exception to the rule requiring a tax to be paid on all gasoline sold in the State or stored in the State to be used in the State, applies only where gasoline is bought on contract directly with the State of Florida itself, by or through some Board or agency who has lawful power and authority to contract or make purchases on behalf of the State. Otherwise purchased, gasoline would be subject to the sale or storage tax. (Panhandle Oil Co. vs. Miss. 277, U. S. Storage tax.)

Yours very truly,

CARY D. LANDIS,
Attorney General.

GASOLINE STORAGE TAX—APPLICATION OF LAW

April 9, 1932.

Dear Mr. Amos:

Chapter 13756 applies to all gasoline stored in the State after losing its character as a shipment of interstate commerce, which gasoline or other like products of petroleum is stored to be used and/or consumed in the State.

The tax on the sale of gasoline applies regardless of whether it is to be used within the State or in interstate commerce, and is in this respect different from the storage tax.

It is provided in Section 2 of Chapter 13756, that the Comptroller may require all persons, firms and corporations to state in their report to the Comptroller any additional or supplemental reports which he may deem necessary for the purpose of ascertaining the facts of any particular case, in order to determine whether or not liability for the tax by said Act imposed has been fully and truthfully reported and the taxes fully paid.

Section 7 of the Act authorizes the Comptroller to make reasonable rules and regulations, which shall have the force and effect of law governing reports and accounts as to gasoline stored to be consumed in the State, and he is further given the power to investigate all cases involving the receiving, handling, or storing of gasoline, and to determine therefrom whether the said Act is being evaded or illegally avoided. From this I conclude that the Comptroller has the authority to require persons, firms and corporations storing gasoline, to state in their reports the full number of gallons stored during the period covered by the report, and to further state what part thereof has been or is to be used in the State, and what part has been or is to be used out of the State in order to determine the amount of tax due thereon.

In other words, persons storing gasoline in the State cannot evade the payment of the tax due on that stored to be used in the State, on the ground that some part thereof is to be used out of the State. And the burden will be upon the one storing to show what part is exempt.

To state the proposition in still a different form, exemption is the exception to the rule, and the burden is upon the party claiming the exemption to make it appear that he is entitled thereto.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE WARRANTS—SECRETARY OF STATE SHOULD RETURN

May 23, 1932.

Dear Mr. Amos:

In the matter of your request that I obtain an order of a court of competent jurisdiction for opening a package in the office of the Secretary of State supposed to contain state warrants as evidence before an investigating committee of the State Senate, which are believed to be sealed up in the package now in the files of the Secretary of State, I beg to advise as my opinion that this is not a matter of which the courts would take cognizance.

The proviso to Section 116 of the Compiled General Laws relates only to the Journals of the Executive Session of the Senate, and the warrants referred to in your letter are no part of the Journals, and therefore do not come within the purview of said provision.

These warrants should have been returned to your office upon completion of the hearing before the Senate Committee, and if they have gotten into the office of the Secretary of State by error, they should be returned to your office, and for that purpose, the Secretary of State would be authorized to go into any packages filed in his office, provided the Journal of the Executive Session of the Senate shall be kept free from inspection or disclosure.

Yours very truly,

CARY D. LANDIS,
Attorney General.

EVERGLADES DRAINAGE DISTRICT—COURT OPINION AFFECTS
SALE OF LAND FOR DELINQUENT TAXES

May 31, 1932.

Dear Sir:

In the case of Rorick, et al, vs. Board of Commissioners of Everglades Drainage District, et al, a Federal Three-Judges Court has by its opinion held certain portions of the Everglades Drainage District Acts of 1929 and 1931 unconstitutional. This opinion will affect the sale of land for delinquent Everglades Drainage District Taxes for 1931 only to the extent that in the absence of a bidder or bidders at such sale, the land must be bid off in the name of the Trustees of the Internal Improvement Fund instead of the Board of Commissioners of Everglades Drainage District.

The tax collectors are not made parties to said suit, and there is nothing in the opinion or in the proposed injunction order prohibiting them from making the sale under the assessment made for 1931. The sales should proceed under the 1931 Act in all respects except as hereinabove indicated.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX SALE LIST—NO AUTHORITY TO PAY CERTAIN CLAIM

June 4, 1932.

Dear Mr. Amos:

This refers to your favor of the 31st ultimo, relative to claim of Sarasota Herald in the amount of \$104.30, for publication of certain items on the tax sale list, which covered lands which should not have been included and on which prior state tax certificates were outstanding.

I do not see how you can lawfully pay this claim, as to pay such a claim you should have as a foundation voucher the tax sale certificates, and there being none, I see no way that you can take money out of the Treasury to pay this amount. It is unfortunate, but whoever furnished the copy to the newspaper should have been careful as to these matters, and should endeavor to regulate this with the newspaper.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BUILDING AND LOAN ASSOCIATIONS—AUTHORIZED TO RECEIVE FUNDS ON STRAIGHT DEPOSIT ACCOUNT BASIS

June 10, 1932.

Dear Mr. Amos:

I am in receipt of your letter of the 31st ultimo, enclosing communication from Judge D. J. Hefferman under date of May 25, 1932, together with letter from Messrs. Kurtz & Reed under date of May 24, 1932, with reference to Osceola Loan & Savings Association. The point of inquiry appears to be whether or not a building and loan association may receive funds on a straight deposit account basis.

In order to answer this question, it will be necessary to consider the nature and purpose of building and loan associations together with the nature and purpose of banks and banking companies.

In volume 4 of Ruling Case Law, page 343, Building and Loan Associations 2, we find the following:

"Briefly stated, the purpose of such an association is the accumulation of funds for division among the members, investment of such funds until the appointed period of division, and the enabling its members to obtain by anticipation a loan or advance from the association, on such terms as may be prescribed, of the proportion to which on division it is contemplated they will be entitled to receive."

By reference to Section 6151, Compiled General Laws of 1927, the definition of building and loan associations is similar to the above.

In Volume 3, Ruling Case Law 375, Banks 1, we find this language:

"Strictly speaking, the term "bank" implies a place for the deposit of money, as that is the most obvious purpose of such an institution."

In Section 1095, Compiled General Laws of 1927, we find this language:

"Every incorporated bank, or other bank, and every person, firm or company having a place of business where credits are open for the deposits or collection of money or currency, subject to be paid or remitted upon drafts, checks or orders * * * shall be regarded as a bank or bankers * * *"

In Section 6146, Compiled General Laws of 1927, we find this language under the title of Private Banks:

"No person, firm or company shall be allowed to conduct a banking business in this State without being incorporated under the banking laws of this State, or being authorized to do business under the national banking laws, except as otherwise provided in this article."

In consideration of the above, it is my opinion that a building and loan association cannot receive funds on a straight deposit account basis.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LAWS IN RE CLAIM OF NEWSPAPERS FOR PUBLISHING

June 15, 1932.

Dear Mr. Amos:

This refers to your favor of the 14th instant relative to the claims of newspapers for \$300.00 each for publishing the General Laws of the regular and two special sessions of the Legislature of 1931. You ask me to give a re-hearing to this question and advise you.

As you know, both at your request and at the request of several of the newspapers, I have given this matter very careful consideration.

The two special sessions of the Legislature held in the year 1931 were practically continuations of the first general session. They were special sessions called for the purpose of completing legislation that was in process and under consideration, and in truth and in fact, the three sessions were really one session.

At the time of the enactment of the legislation providing for the publication of the general laws by a newspaper in each county, I am clearly of the opinion that the Legislature did not have in mind the question of special sessions. In fact a special session of the Legislature prior to that time in our State was almost an unheard of thing, and the act itself uses only the word session and not the words general and special sessions.

Sections 2262 to 2265 of the Compiled General Laws covers the statutory law on this subject. Sections 2262 and 2263 provides for the certification of the laws by the Secretary of State and for the designation of a newspaper by the Board of County Commissioners of each county. Section 2264 refers to the compensation and the following wording is used:

"The Acts shall be published as certified by the Secretary of State, etc. * * * and the publisher shall receive as compensation for the said publication the sum of \$100.00, etc."

It seems to me that the Acts of the special sessions of 1931 should be considered in law really a part of the general session, just as two laws enacted at different dates in the same session should be considered, and is *pari materia*. I cannot believe that the Legislature had in mind, for example, that if the Legislature was convened for the purpose of enacting one law, as there is now some contention for such a session, that the State should be put to the expense of \$100.00 in each county or a total of \$6,700.00 for the printing of one law in one newspaper in each county of the State. I view the public moneys as trust moneys, to be carefully safe-guarded and used only for such purposes as it was clearly the intention of the Legislature that they should be used. I cannot bring myself to believe that the Legislature ever intended that there should be paid \$100.00 for the printing of the general laws of each special session as is contended.

I am, therefore, still of the opinion, as heretofore expressed, that under the law, the newspaper in each county that published the general laws of the general and two special sessions of 1931 is entitled to but \$100.00. If my conclusions are wrong, the courts can readily correct the matter.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

GASOLINE TAX—POST EXCHANGE AT FORT BARRANCAS
NOT SUBJECT TO

June 28, 1932.

Dear Mr. Amos:

I have been asked for an opinion as to whether gasoline sold to the Post Exchange at Fort Barrancas, Florida, to be used in the operation of said Post Exchange, is subject to the Florida gasoline sales tax.

It appears from the representations made to me that the sale of gasoline to this Post Exchange is made on government property ceded to the United States by the State of Florida. It also appears from the authorities submitted that post exchanges are established and operated under army regulations, and are instrumentalities of the Federal Government.

This being true, the State is without authority to impose the tax on gasoline sold to said Post Exchange on government property, provided the use of said gasoline is confined exclusively to the operation of said Post Exchange, and is not sold to or used by outsiders.

Yours very truly,

CARY D. LANDIS,
Attorney General.

GASOLINE TAX—IF FISHING BOATS SUBJECT TO

July 7, 1932.

Dear Mr. Amos:

The question of whether gasoline used by fishermen in their boats beyond the waters of the State of Florida and the United States is subject to the gallonage tax depends on

- (a) Whether the gasoline was sold in the State of Florida, or
- (b) Whether bought beyond the borders of the State and shipped in to the State and stored to be used wholly beyond the borders of the State, or
- (c) Whether bought from without the State and shipped into the State and stored to be used partly in the State and partly out of the State.

Gasoline sold in the State is subject to the gallonage tax regardless of where the same is to be used.

Gasoline bought out of the State and shipped into and stored in the State to be used wholly beyond the borders of the State is not subject to the 'gallorage tax.

Gasoline bought without the State and shipped into and stored within the State to be used partly within the State and partly without the State is subject to the gallorage tax only on that part used within the State. This last statement seems to be sustained by that part of Section 2 of Chapter 13756, Laws of Florida, Acts of 1929, requiring all persons, firms, and corporations subject to the provisions of said Act to make reports under oath to the Comptroller before the 15th day of each month of the number of gallons of gasoline or other products of petroleum kept by the person, firm, or corporation holding the same in storage for a period of more than 24 hours after the same has lost its interstate character, "and the amount of such products which are kept in storage in this State to be used or consumed."

It appears therefrom to be the duty of such person, firm or corporation not only to report the number of gallons kept in storage, but also the amount of such products which are kept in storage to be used or consumed in the State. It is my construction of the statute that the legislative intent is that where a person, firm, or corporation brings into the State gasoline, and stores the same to be used in a business which requires the use thereof both within and without the State, such person, firm or corporation must show in his report to the Comptroller the whole number of gallons so stored, and also the number of gallons thereof consumed within the State, for it is only that part stored to be used or consumed in the State that is subject to the tax, and the duty is upon the storer to make it appear what part is subject to the tax, and what part is exempt therefrom, and this is the practical way of determining that fact.

Yours very truly,

CARY D. LANDIS,
Attorney General.

GASOLINE TAX—APPLICATION OF LAW IN RE SEABOARD
AIR LINE RAILWAY

July 15, 1932.

Dear Mr. Amos:

The letter of Hon. James F. Wright, General Solicitor of the Seaboard Air Line Railway, to you under date of July 12, 1932, has been carefully considered by this office.

Where gasoline is purchased by the Seaboard Air Line Railway in another State and is shipped into this State and stored, it is clearly my opinion that to the extent that such gasoline is used for intra-state business by the Seaboard Air Line Railway, they must pay the State gasoline tax and, on the other hand, if this gasoline is brought in, stored and used in inter-state commerce, it is not subject to our State gasoline tax.

Our State laws require that honest and fair reports be made to the Comptroller's office setting forth just what gasoline is used in either case, and when the tax is applicable, that the same be paid.

It seems to me that there can be little question about this law, and if the Seaboard Air Line Railway Company lives up to its past reputation of being fair and just in these matters, I believe they will make proper reports and pay this tax accordingly. If they do not do so, please advise this office with proper information, and we will be obliged to take the matter into the Federal Courts.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

FLORIDA SECURITIES COMMISSION—FEES PAID WHEN
APPLICATION FILED NOT RETURNABLE

July 16, 1932.

Dear Mr. Amos:

This refers to your request for an opinion as to whether or not the fees paid to the Florida Securities Commission at the time of filing information required by law, shall, in the event the application is not granted or the petition is dismissed, be returned to the applicant.

The Florida Securities Commission Act provides that these fees shall be paid at the time of the filing of the statements. When the statements are once filed, the Commission is then put to the necessity of making a study of the statements and information, and making investigations, etc. I find nothing in the law that provides for the return of any part or all of these fees. It is my opinion that the Legislature intended that when the application was once filed and the money paid in, that this money then becomes a part of the revenue of the State and is not returnable.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

MOTOR VEHICLES, SUPERVISION AND REGULATION
CONSTRUCTION OF SEC. 17 OF LAW, IN RE DISTRIBUTION
MILEAGE TAX TO CITIES AND TOWNS

July 19, 1932.

Dear Mr. Amos:

This refers to your favor of July 19th, 1932, relative to construction of Section 17 of Chapter 14764, Acts of 1931.

It is my opinion that the general context of this Act indicates that it is meant that \$25.00 annually shall be paid to each incorporated city and town

where the auto-transportation company maintains a depot, warehouse, station or agency in such city or town, and that \$25.00 shall be allowable to each town from each certificate holder.

Very respectfully,

CARY D. LANDIS,
Attorney General.

COUNTY JUDGE—IN RE COMPENSATION AUTHORIZED BY
CHAPTER 14739, ACTS 1931

July 20, 1932.

Dear Mr. Amos:

This will reply to your favor of July 16th, requesting my opinion regarding the compensation to which a county judge is entitled under the provisions of Chapter 14739, Acts of 1931, which requires county judges to make monthly reports to the State Comptroller as Commissioner of Revenue, showing a list of persons who died leaving property in the county during the previous month, and those who died prior thereto at any time, and whose deaths have not been reported by said county judge to the Comptroller as said Commissioner of Revenue; also the compensation to be allowed the county judge for recording the certificates of the Commissioner of Revenue, which were issued under said Act.

Permit me to say the Act does not appear to provide any compensation whatever to the county judge for making the monthly reports. However, the Act does provide that the county judge shall receive the same fees as are provided by law to be paid to clerks of the Circuit Court for recording the certificates of the Commissioner of Revenue which are issued under the Act.

Chapter 11893, Acts of 1927, fixing the fees of clerks of the circuit courts, provides that the clerk shall be entitled to, for copying the first 100 words of any record of paper, 25c, and for each additional 100 words or fraction thereof, 12½c. It is my opinion that this is the basis for compensation to be allowed the county judge for recording the certificates of the Commissioner of Revenue, which are issued under the provisions of the Chapter above mentioned, and that this is the only compensation to which the county judge is entitled for his services under said Chapter.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY COMMISSIONERS—NOT AUTHORIZED TO EMPLOY
ATTORNEY TO MAKE COLLECTIONS IN CERTAIN CASES

July 21, 1932.

Dear Mr. Amos:

This refers to your request for an opinion as to whether or not the County Commissioners of the several counties may lawfully employ an attorney to make collection of taxes reported on the error and insolvency lists on which the Tax Collector has taken credit in the settlement with the State as to collection of taxes within his jurisdiction.

The law provides for a Tax Collector, whose duty it is to collect taxes. He is an official under oath and bond, and I do not find any law that would authorize the County Commissioners of any county to provide for any other form or method of collecting taxes than through the Tax Collector.

Section 959 of the Compiled General Laws of the State of Florida, provides that the Tax Collector shall report to the County Commissioners the errors, double assessments and insolvencies, for which he is to be credited under the different heads, giving in every case the name of the party on whose account the credit was to be allowed.

It is presumed that under the oath and bond of the Tax Collector that he will do this correctly, and that his report shall represent a truthful settlement, and if so, there would be no further possibility of collection. The Supreme Court of the State of Florida in the case of the State of Florida, ex rel. vs. Bloxham, Comptroller, reported in 33 Fla., page 482, text 494, in referring to and speaking of a Tax Collector uses this language:

"He shall also report to the County Commissioners the errors, double assessments and insolvencies for which he is to be credited under different heads, giving in every case the names of the parties on whose account the credit is to be allowed. The neglect and failure on the part of the Collector of revenue to collect taxes that are due and collectable may subject him to a suit on his official bond for a violation of official obligation".

It seems to me that the Supreme Court has in this manner held that the Tax Collector is the man to collect taxes, and that if he makes an improper errors and insolvencies list, that liability attaches to his official bond and, on the other hand, if the report is correct, then there is nothing left to collect. I do not believe the County Commissioners would be authorized to employ anyone to make collections in this manner on the errors and insolvency report.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

GASOLINE TAX—APPLICATION OF LAW IN RE PURCHASES
MADE BY SEABOARD AIR LINE RAILWAY

August 5, 1932.

Dear Mr. Amos:

I have read the letter of Honorable James F. Wright, General Solicitor of the Seaboard Air Line Railway, of the 2nd instant, in which he observes that in my letter to you of the 15th ultimo, I concur in his view that gasoline imported into Florida and stored and subsequently used for purposes of interstate commerce is not subject to the gasoline storage tax. This statement was evidently based on the statement of my letter of the 15th ultimo, as follows:

"If this gasoline is brought in, stored and used in interstate commerce, it is not subject to our State gasoline tax."

This statement in my letter to you of the 15th ultimo was evidently misconstrued by Mr. Wright, and should be further explained.

There is a distinction in commodities bought and sold or traded in interstate commerce, and those used as a means of carrying on interstate commerce. As to the latter, the Supreme Court of the United States in *Eastern Air Transport, Inc. vs. South Carolina Tax Commissioner*, 76 L. Ed. 470, quoted from *New Jersey Bell Telephone Company vs. State Board of Taxes and Assessments*, 280 U. S. 338, 74 L. Ed 463, as follows:

"It is elementary that a State may tax property used to carry on interstate commerce."

That was the question before the Court in *Eastern Air Transport vs. S. C.*, etc., in which the Court held that gasoline sold in South Carolina, but used exclusively as a means of carrying on interstate commerce, was subject to the South Carolina gasoline sales tax.

Our gasoline storage tax Act, Chapter 13756, Acts of 1929, imposes a tax on all gasoline or other like products of petroleum brought into this State from any other State or foreign country, and stored for a period of twenty-four hours after it loses its interstate character as a shipment in interstate commerce, when the same is stored to be used in the State.

In the first place, the gasoline is brought into the State as a shipment in interstate commerce. That is, it is bought from without the State as a commodity of commerce, and as a part of that transaction the shipment is brought into the State.

In the case of Seaboard Air Line Railway, the shipment is brought into the State not to be used as a commodity of commerce, that is, to be further sold or traded, but to be used as a fuel in the instruments used in carrying on the business of the Railway Company, which consists in large part in interstate commerce. The gasoline thereby becomes one of the instruments used in carrying on that commerce as distinguished from the commerce itself.

Commerce in its general acceptation is the exchange or buying and selling of commodities in business intercourse, and this is particularly applicable in the case of goods. So when gasoline is bought from without and shipped into the State by the railway company to be thereafter used not as a commodity of commerce but as one of the means of carrying on commerce, it loses its interstate character as a shipment in interstate commerce when it reaches its destination for that purpose. If thereafter such gasoline is stored for a period of twenty-four hours to be used in the State, the act on which the tax applies, to-wit: the storage, is complete, and the party so storing thereupon becomes liable therefor.

Gasoline bought without the State and shipped into and stored within the State to be used partly within the State and partly without the State is subject to the tax only on that part used within the State. This position seems to be sustained by that part of Section 2 of Chapter 13756, Acts of 1929, requiring all persons, firms, and corporations subject to the provisions of the Act to make reports under oath to the Comptroller before the 15th day of each month of the number of gallons of gasoline or other products of petroleum kept by the person, firm or corporation holding the same in storage for a period of more than twenty-four hours after the same has lost its interstate character, "and the amount of such products which are kept in storage in this State to be used or consumed."

The rule for determining the liability for this tax was stated by the Supreme Court of Florida in the case of *Jerome H. Sheip Company vs. Amos*, 130 So. 699 (Text pages 702, 703) as follows:

"The facts which determine liability for the gallonage tax are these: -The gasoline, or other petroleum products in question must be (a) imported into this State from another State or foreign country; (b) it must be kept in storage in this State for a period of 24 hours after it has lost its identity as a shipment in interstate commerce; (c) it must be thus kept in storage to be used and consumed in this state; (d) it must be gasoline with reference to which no sales tax has been paid.

"Factors (a) and (d) determine the general class of gasoline contemplated by the statute; factor (b) determines the specific subject of the tax, namely, the present act of storage; factor (c) limits factor (b), in that the tax is measured by gasoline that is not only kept in storage, but which is so kept to be used and consumed in this State. Primarily, liability for the tax arises by reason of the present act of storage, a species of use. Liability for the tax is not dependent upon the future and uncertain act of withdrawal, a mere change in the form of possession, as in the *Kentucky Distilleries Case*, supra, nor is it a tax upon consumption, although it is applicable only to the storage of gasoline "to be used and consumed" in this State. If gasoline falling within factors (a) and (d) is consumed in this State without being stored, or if it be stored but not to be consumed in this State, the tax apparently would not apply under the terms of the statute. Even though the owner and the storer be the same person, the tax is one which affects the use of gasoline, and is specifically upon the privilege of storage.

Storage is a particular use incident to ownership. The owner's privilege of storage is none the less taxable than when storer and owner are different persons."

All the operations of the Railway Company stated in Mr. Wright's letter of the 2nd instant, being operations within the State, it is my opinion that the gasoline shipped into and stored in the State and used in said operations, is subject to the tax imposed by Chapter 13756, Laws of Florida, Acts of 1929, and should be reported by the Company, and the tax paid thereon as required by said Act.

I am returning Mr. Wright's letter.

Yours very truly,

CARY D. LANDIS,
Attorney General.

GASOLINE TAX—IN RE-CREDIT ON SALES FOR EXPORT

August 6, 1932.

Dear Mr. Amos:

I understand your request to be for an opinion as to what showing should be made by exporters of gasoline, in order to obtain credit for the tax imposed by law upon the sale of gasoline in Florida.

I note the suggestion of counsel for the Texas Company, to-wit: a letter from Messrs. Knight, Adair, Cooper & Osborne, dated at Jacksonville, Florida, August 3, 1932, that the Company in making sales for export obtain copy of the ship's manifest, together with copy of the customs house clearance and also affidavit of the exporter that the product has been purchased for export and will be delivered at Nassau or such foreign destination as may be appropriate.

This is well and good so far as it goes, but it seems to me that in addition thereto you should be furnished satisfactory evidence of delivery, that is, evidence of acceptance by the consignee or of delivery by the transportation company.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—ASSIGNMENTS OF MORTGAGES AND CERTIFICATES OF DEPOSIT, ETC., SUBJECT TO

August 16, 1932.

Dear Mr. Amos:

I have your letter of the 10th instant, relative to the Documentary Stamp Act, Chapter 15787, Acts of 1931.

In reply I beg to say that in my opinion assignments by banks of mort-

gages, certificates of deposits, and other obligations to pay money, to secure loans from the Federal Government under recent relief Acts of Congress, require documentary stamps to be affixed under said statute.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY FUNDS—METHOD OF HANDLING

September 1, 1932.

Dear Mr. Amos:

This refers to your favor of August 31, enclosing letters and copies of letters passing between certain Court Officials of Orange County, State Auditor Murrow and yourself, all of which have to do with the handling of county funds under the statutes pertaining to the county budget.

Section 2306, Compiled General Laws, 1927, among other things provides that "the county commissioners shall make an estimate of the *necessary* and *ordinary* expenses and of all *special* and *extraordinary* expenditures contemplated for the fiscal year ensuing, etc."

"Such estimates shall set out every *item* of expenditure contemplated or reasonably to be anticipated during the year, for which such estimates are made, etc."

"The adoption of said estimates by the said board shall give said estimates the force and effect of *fixed appropriations* and the same shall not be *altered* or *amended* or *exceeded*, nor shall the expenses estimated under one head be paid out of the estimate for any other expense".

"* * * That nothing herein shall be construed as prohibiting the reserving in the estimates a reasonable sum for contingencies and emergencies, and the appropriation of any part of said sum so reserved for any expense of the county authorized by law".

It is my opinion that where the county commissioners have expended the amount of a given item of the budget and, due to some emergency or contingency, further expenditures under the same item have to be made, the county commissioners may make such expenditures out of the fund "*Reserve for Contingencies*," and I think the suggestion of the State Auditor, Mr. Murrow, that the expenditure should show under the proper item (even though it shows an over-draft) is correct, provided, of course, that the minutes show that the over-draft is covered by the contingency fund.

The Statute, Section 2304, Compiled General Laws, 1927, contemplates a transfer from one fund to another fund, thus where there is a balance in one fund which probably will not be used during the fiscal year, and some other fund and the contingency fund are exhausted, the board, by and with the consent of the Comptroller, may transfer a part or all of such balance in one fund to another fund, but this statute, in my opinion, does not mean a transfer from one item to another item or fund.

The Board of County Commissioners is prohibited from expending more than ninety-five per cent (95%) of the estimated revenue and the taxes

levied for the year (see Section 2302, Compiled General Laws, 1927), unless more than nine-five per cent (95%) should be collected. If more than ninety-five per cent is collected, this surplus, in my opinion, has the same status as the fund "Reserve for Contingencies" and should be used only in the same way.

The correspondence and documents forwarded to me with your favor of August 31 are herewith returned.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

TRUCKS—IN RE MILEAGE TAX DUE BY NATIONAL CONVOY
& TRUCKING CO., AND BLUE'S TRUCK LINE

September 12, 1932.

Dear Sir:

This refers to your written request under date of September 10, 1932, for my opinion on questions arising out of the above matter.

The facts being that the National Convoy and Trucking Company and Blue's Truck Line are each operating under certificates of convenience and necessity issued by the Railroad Commission of the State of Florida; that, according to your records, each of these carriers have unpaid amounts of mileage taxes due the State of Florida under Chapter 13700, Laws of Florida, Acts of 1929, and the question arises as to the effect of the decision of the case of E. S. Smith, Appellant, versus W. B. Cahoon, Sheriff of Duval County, Appellee, in the Supreme Court of the United States—Opinion rendered May 25, 1931.

In this case the Supreme Court had before it Chapter 13700, Laws of Florida, Acts of 1929, which is the act under which mileage taxes are now shown on your books as unpaid. The act was challenged on constitutional grounds and the court held the act was invalid as applied to the appellant, a private carrier, on various grounds, and then said:

"It is unnecessary to consider the questions that have been raised with respect to the validity of the provision for the mileage tax *separately* considered."

In my opinion the Court struck down the entire act on the ground of uncertainty and also held that the act was not severable as to requirements for common carriers and private carriers, and, hence, the entire act had to fall.

The Court indicated that in certain cases an act, uncertain in its terms, might be saved by a severance of its terms being made by judicial decision, or by competent authority but in this case the Court said, after citing a number of authorities:

"It is idle to say that one could take a statute of this sort, establishing requirements binding upon private and common carriers alike, and divide its terms so as to make a valid scheme applicable to private carriers".

The Court, having thus found sufficient constitutional objections to the act to determine that the whole act must fall, did not proceed further and separately consider the validity of the provision for the mileage tax.

It is my opinion that the Supreme Court of the United States held in the Cahoon case, above discussed, that the entire act, to-wit, Chapter 13700, was unconstitutional and void and the mileage tax, now standing on your books as unpaid being a tax assessed under this act, is not now collectible. The act which was the authority for levying the tax, having been held unconstitutional and void by the highest court of the land with competent jurisdiction, the tax must likewise fall.

You ask my opinion on the further question as to whether or not the National Convoy and Trucking Company and Blue's Truck Line are due a two-way mileage tax under the 1931 Act, to-wit, Chapter 14764, Laws of Florida.

I am of the opinion that these companies and all auto transportation companies operating under certificates of convenience and necessity or a permit authorizing them to engage in the transportation of passengers or freight or both are liable for a two-way mileage tax, i.e., the mileage tax assessable under Section 16 of Chapter 14764 is for *every mile traveled by the motor vehicles* at rate as stated in the act per mile. This is the exact wording of the statute and I find no exception in the act. In other words, the tax is assessable for *every mile traveled*, that is, whether going or coming, whether loaded or unloaded or partially loaded. The payment of the tax *per mile* under the permit or certificate gives the company or person the right to use the road and whether there is a pay load on the vehicle or not has nothing to do with the tax. That is a matter of concern only to the operator of the vehicle. Thus it is, that in my opinion a two-way tax (or a tax for every mile traveled) is assessable and should be collected.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—EFFECTIVE DATE

October 8, 1932.

Dear Mr. Amos:

This refers to your favor of the 8th in which you request my opinion as to the date when Chapter 15787, Laws of Florida, took effect.

On authority of opinion rendered by the Supreme Court of the State of Florida in the case of *In Re: Alexander*, reported in Florida Reports, volume 53, page 647, I am clearly of the opinion that Chapter 15787 took effect sixty days after the final adjournment of the Extraordinary Session of the Legislature in 1931. This session was finally adjourned on July 26th. Thus it is, that under the Constitution you will count sixty days from and after July 26th which would make the Act effective on September 24th, 1931. It is true that the first Section of this Act has in it the following words:

"That on and after the passage of this Act, etc."

Yet this same clause was under discussion by the Supreme Court in the case above referred to, and in line with that decision Chapter 15787, in Sections 2 and 3 provides that the Comptroller shall prescribe suitable rules and regulations, and that the Comptroller shall prepare and distribute suitable stamps, etc., all of which would indicate that this Act was not to take effect except under the General Constitutional provision. So it is my opinion that this Act takes effect under date of September 24th.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SCHOOL BOARD—PROMISSORY NOTE NOT ELIGIBLE
AS COLLATERAL

October 9, 1932.

Dear Mr. Amos:

This refers to your favor of October 7th requesting my opinion as to whether or not a promissory note of the School Board would be eligible as collateral under the statutes of this State for depository bonds of the School Board of the county issuing said notes.

In reply to this I beg to advise that in my opinion such promissory notes would not be eligible collateral. The statutes require as eligible collateral either a surety bond, Federal, State, county, or municipal bonds, or Federal Certificates of Indebtedness, and inasmuch as the promissory notes mentioned do not fall within this classification, in my opinion they are not eligible collateral.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

COUNTY OFFICERS—CONSTRUCTION OF STATUTE
IN RE FEES

October 26, 1932.

Dear Mr. Amos:

It is my opinion that the proper construction of the statutes with reference to compensation to officers where the same is paid by fees or commissions is that the commission is based on what is earned and received by the officer during the incumbency of the officer. Fees represent compensation to the State for services rendered by it through the officer.

Commissions withheld under the provisions of Section 1030 and 1031, Compiled General Laws, during the incumbency of one tax assessor during the last year of his term should be paid to and accounted for by his successor during the next succeeding year, the net results of which would be the same

as if the commissions withheld during the last year were paid to the officer from whom withheld.

In other words, the incoming tax assessor gains the commissions withheld from his predecessor during the last year of his predecessor's term, but loses those commissions withheld during the last year of his own term. This would save confusion and extra work which would result from undertaking to carry accounts of two officers during the same term.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY OFFICERS—IN RE: FEES EARNED DURING
INCUMBENCY BUT PAID AFTER RETIREMENT

October 26, 1932.

Dear Mr. Amos:

What I have heretofore said with reference to fees earned by an officer but collected after his term of office expires and his retirement therefrom, following the office, is not to be construed to mean that an officer is not entitled to the fees earned during the last month of his tenure in office when report therefor is made, if required, and claim made in the usual way. When an officer in the usual way promptly makes the required official report of his last month in office, and presents his claim for compensation earned during that month to the proper authority, he is entitled to be paid therefor in the usual manner in which reports are received and payment of official compensation is made at the end of any other month.

In other words, such official upon the expiration of his term of office should promptly and in the usual way make report of the work of his office for the last month, presenting his bill for compensation earned during that month, and the same should be paid by the lawfully constituted authority according to their usual custom of receiving such reports and making payment to officers for their salaries or fees.

What I have heretofore said and to which I adhere, with reference to fees earned during the incumbency of an officer, but paid after his retirement therefrom, following the office, does not apply to compensation earned during his last month in office, but applies to those fees which are earned but are required by law to be held back until the happening of some future contingency, as for instance, the redemption or sale of state-owned tax certificates or the final settlement of errors and insolvency in the tax roll and other such contingencies.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY OFFICERS—APPLICATION OF STATUTE
IN RE CERTAIN FEES

October 25, 1932.

Dear Mr. Amos:

I have your letter of the 21st instant, attaching a letter from the Honorable Fred E. Fenno, Clerk Circuit Court, Palm Beach County, and one from the Honorable W. L. Tilden, Attorney for the Board of County Commissioners for Orange County, Florida. Mr. Fenno in his letter wishes to know whether fees received by the tax collector after taking office in January, 1933, but which have been earned prior to the date of his taking office, belong to such tax collector, or whether to the county as additional surplus earned by that office during the term of the retiring tax collector.

It is my opinion that the fees received by the tax collector after taking office in January, 1933, for services rendered by his predecessor go to the officer taking office January 1st, 1933, to be by him reported and accounted for as a part of the earnings of that office for the year 1933. I think this was made clear in my letter to you under date of October 22, 1932, under the subject, *Re: Tax Assessors' Commissions Withheld under Sections 1030 and 1031, Compiled General Laws.*

What Mr. Tilden wants to know is whether the policy adopted by you in March, 1930, of allowing the tax collectors commissions on tax certificated lands to be retained by the Clerk of the Circuit Court upon the redemption of such tax certificates and by him turned over to the tax collector instead of first remitting to you and you in turn remitting back to the county may be continued. I hesitate to advise on matters of policy, but since you have requested my opinion in the matter, I respectfully call your attention to Section 1004 of the Compiled General Laws of Florida 1927, which requires the Clerk of the Circuit Court monthly and oftener, if requested, to report to you in detail all sales and redemptions of tax certificates during the preceding month belonging to the State, and to remit the amount with his report. You then remit to the proper officers the amounts due the State and county and sub-districts respectively, taking receipts therefor.

I think this statute contemplates that the entire proceeds derived from the sale or redemption of State-owned tax certificates, including the fees of the certificate, interest, costs, and charges, be reported and paid over by the clerk to you and by you in turn back to the State and county.

I am returning the letters attached to your letter of the 21st instant.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX SALE CERTIFICATE—AUTHORITY FOR REFUNDING TO
HOLDER AMOUNT RECEIVED BY STATE, ETC.

November 2, 1932.

Dear Mr. Amos:

Your only authority for refunding to the holder of a tax certificate the amount received by the State on the purchase of such certificates is under Section 1009 of the Compiled General Laws of Florida, when it is certified to you by the Clerk of the Circuit Court of any county that land has been sold for unpaid taxes when the taxes have been paid, or where the land was not subject to taxation at the time of the assessment, on which the same was sold, or because the description in the assessment was void, or because of some error or omission which invalidates the sale.

The letter of Mr. J. O. Phillips, attorney-at-law of Miami, attached to your letter of the 28th instant, shows that the basis for the claim for refund is not based on any of these reasons, but is based on an alleged overvaluation. This was a matter to be settled by the board of county commissioners sitting as a board of equalization.

In the first place, it was the duty of the owner to return the land for its taxes, but whether such return was made or not, this would not preclude the owner from going before the equalization board and complaining of the valuation placed by the assessor, and an omission to do so because of the lack of information as to the value placed on the land by the tax assessor would not give the owner or subsequent purchasers the right to demand of you a return of the amount received by the State upon sale of the tax certificate.

I am returning herewith all files attached to your letter of the 28th instant.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RADIOS—DEALERS REQUIRED TO PAY LICENSE

November 3, 1932.

Dear Mr. Amos:

Replying to yours of November 1, with which you enclose a letter from Sears-Roebuck & Co., relative to the license which should be collected from dealers in radios, permit me to say Section 5 of Chapter 14491, Acts of 1929, provides that only one State license shall be required in any case unless otherwise provided.

Sub-section E of Section 17 of the Chapter provides that "Dealers in radios shall pay a license tax of ten dollars". I construe the statute to mean that dealers in radios are required to have one State license, for which ten

dollars should be paid, and that a county license of five dollars should be paid in each county in which the dealer may have a store. Only one State license is required regardless of the number of counties in which the dealer may operate.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

APPROPRIATION BILL—CONSTRUCTION IN RE
UNEXPENDED BALANCE

November 4, 1932.

Dear Mr. Amos:

This is in response to your verbal request for my opinion as to unexpended balance in any item of appropriation bill.

It seems to me clearly that Section 3 of the appropriation bill, set forth on page 1292, Acts of 1931, the same being Chapter 15719, Laws of Florida, clarifies the right to use the unexpended balance in any particular item of the appropriation bill. Section 3 is as follows:

"Section 3. Any unexpended balance in any of the items of appropriation contained in this Act for any office or department, institution or board, if not required for the purpose for which specifically appropriated, may, with the approval of the Budget Commission, be applied to other necessary and regular expenses of the office department, institution or board for which appropriated".

It is my opinion that under this Section any unexpended balance that there may be in any item at any time during the biennium, may be, with the approval of the Budget Commission, applied to other necessary and regular expenses of the office, department, institution or Board for which appropriated, and thus it is, that if we find, as I understand the case to be, there is an unexpended balance in the appropriation made for the State Hospital at the end of the first year of the biennium, then this unexpended balance might be used, if the Budget Commission sees fit to approve the same, for other purposes, as set forth in Section 3 above quoted.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

NATIONAL BANKS—CONSTRUCTION OF LAW IN RE SITUS
OF TAXATION FOR STOCK OWNED BY NON-RESIDENTS

December 2, 1932.

Dear Sir:

I note the request in your letter of the 1st instant, for an opinion as to the situs of taxation for National Bank shares owned by non-residents.

Section 907 (705), Compiled General Laws of Florida, 1927, contains the following provision with reference to the situs of National Bank shares for the purpose of taxation:

"* * * All shares of banking associations organized within the State, pursuant to the provisions of Congress to procure a national currency secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof, held by any person or body corporate, shall be included in the valuation of the personal property of such person, or body corporate, in the assessment of taxes in the town or city where such banking association is located and not elsewhere, whether the holder resides there or not; * * *"

Section 5219 of the United States Revised Statutes, as amended March 25, 1926, relating to the taxation of shares of National Banks by the States, and as appears in Section 548, Title XII, U. S. Code, Annotated, provides:

"State taxation. The Legislature of each State may determine and direct subject to the provisions of this section, the manner and place of taxing all shares of National Banking Associations located within its limits * * *"

"2. The shares of any National Banking Association owned by non-residents of any State, shall be taxed by the taxing district or by the State where the association is located and not otherwise; and such association shall make return of such shares and pay the tax thereon as agent of such non-resident share holders."

Congress, therefore, has definitely determined shares of National banks owned by non-residents of a State shall be taxed where the association is located and not otherwise, and this fixes the situs of the shares of such banks for taxation purposes which cannot be changed by the Legislature if it sought to do so. However, our Legislature has also fixed the situs of this class of property with the banks. In *Roberts vs. American National Bank*, 97 Fla. 411, 121 Sou. 554, in discussing the power of the State to assess National Bank shares, the Court said:

"The shares in a National banking association can not be taxed under State authority except as Congress consents, and then only in conformity with the restrictions attached to such consent given."

and after quoting Section 548, Title XII, our U. S. Code, Annotated, said:

"It was intended by this Section to comprehensively control the subject with which it dealt, and thus to furnish the exclusive rule governing State taxation as to Federal agencies created as provided in the Section."

I, therefore, advise that shares of stock of National Banks located in Florida owned by non-residents are taxable for State and County purposes in the County where such banks are located.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CRIMINAL COURT OF RECORD—BOND OF CLERK

December 13, 1932.

Dear Sir:

This refers to your favor of December 13, enclosing bond of Mr. F. M. Ford, as Clerk of the Criminal Court of Record of Volusia County, Florida.

This Court and the office of Clerk is provided for in Chapter 14704, Laws of Florida, Acts of 1931. Section 11 of this Chapter provides that a clerk shall be appointed, who shall hold his office until his successor shall have been elected and have qualified. The act then provides that this successor shall be elected at the General Election. This in my opinion, fixes the beginning of the office of the elected clerk as soon as he is elected, and this is authorized by our Constitution, Section 14, Article XVIII, which provides that the terms of county officers shall commence on the first Tuesday after the first Monday in January next, after their election, unless otherwise provided by the Legislature. It is my opinion that the Legislature clearly intended that the term of this office of the Clerk of the Criminal Court of Record of Volusia County, Florida, should begin immediately upon his election. It is my opinion that the bond tendered from November 9th, 1932, is correct.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

RACING COMMISSION—LAW REQUIRES RETURN AND REPORT
TO BUDGET COMMISSION

December 15, 1932.

Dear Sir:

This refers to your favor of the 15th instant in which you request my official opinion as to whether or not the Racing Commission of the State of Florida should file a report with the Budget Commission, as required by Chapter 14654, Laws of Florida, Acts of 1931. It is my opinion that the above chapter does require the State Racing Commission to file its report with the State Budget Commission inasmuch as the specific wording of the act unquestionably covers the State Racing Commission when it uses this language:

" * * * Each of the several State departments, bureaus, divisions, officers, commissions, institutions and other agencies and undertakings receiving or asking financial aid from the State of Florida, shall report to the Budget Commission the official estimates on blanks furnished for such purpose, etc."

Under the Racing Act, Chapter 14832, the moneys which are required to be paid by the Racing Associations to the State of Florida are paid direct to the Treasurer of the State of Florida in his capacity as ex officio Treasurer of the commission, etc. The said Racing Act then provides appropriation

out of the State Treasury from this particular fund for the salaries of the State Racing Commission.

Considering the two acts together, I am clearly of the opinion that the Legislature intended for the Racing Commission, as well as all other State commissions of this character to make a proper return and report to the State Budget Commission.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

STATE TREASURER

HON. W. V. KNOTT

TRUST SECURITIES—DISPOSITION IN CERTAIN CASES

May 14, 1931.

My Dear Sir:

Replying to yours of the 9th instant, enclosing letter from Mr. Chas. I. Dwiggins, liquidator of the Central Bank and Trust Company, requesting that you forward to him mortgage and note signed by B. H. Reynolds and also the mortgage and note signed by Floyd D. Cheatham, which you are holding as a deposit under the Trust Act of 1911, I beg to advise that for the purpose of liquidation of the trusts of the Central Bank and Trust Company, it is my opinion, that these trust securities should be delivered by you as State Treasurer to Mr. Dwiggins as the liquidator of the Central Bank and Trust Company to be by him administered in connection with the liquidation of the Central Bank and Trust Company by the State Banking Department.

Mr. Dwiggins as such liquidator acting for and on behalf of the State Banking Department, in my opinion, should file a petition with the Circuit Court after receiving these securities from you and have the court direct how these securities should be applied to the satisfaction of trust claims which need adjusting. The law, in my opinion, contemplates that all the business of the bank, including the trust business, shall be liquidated and wound up by delivering these trust securities to the liquidator in cases like this one now before you.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

COUNTY COMMISSIONERS—DUTIES IN RE ENFORCING PAYMENT OF PAST DUE COUPONS ON CERTAIN BONDS

May 16, 1931.

Dear Sir:

This will acknowledge receipt of your letter of the 4th instant with reference to above styled bonds turned over to the Board of Administration by the County Commissioners of Brevard County, Florida, under the provisions of Chapter 14486, Laws of Florida, Acts of 1929, representing Interest and Sinking Fund moneys of Brevard County and District Road and Bridge Bonds.

I note you have been unable to get any response from the town of Pineview, Georgia, or its officers, and that you request that I take the necessary steps to have mandamus proceedings instituted against the proper officials of said municipality to require the levy, collection and proper disposition of the necessary taxes to provide for the Interest and Sinking Fund requirements of said bonds, some of the coupons of which are delinquent.

The second paragraph of Section 3 of Chapter 14486, Acts of 1929, authorizes the Board of County Commissioners to sue for and recover possession of all money due to the Board of Bond Trustees in the same manner as such Bond Trustees could have sued for the same prior to the passage of said Act. It seems clear to me, therefore, that it is the duty of the County Commissioners to take such steps as may be necessary to enforce the payment of the past due coupons on the bonds in question.

Under the provisions of said Act, you become ex officio County Treasurer, as the custodian of all funds administered by the Board of Administration created by said Act, and it is my view of the intent and purpose of said Act that such funds as come into your hands as ex-officio County Treasurer are net, that is, net except such local expenses as are incident to the assessment and collection of taxes. There is nowhere any provision in said Act for the payment of costs and fees for enforcement of claims out of any funds turned over to you, and it seems clear to me that all expenses in connection with the collection of Interest and Sinking Fund moneys by litigation and the litigation itself must be borne and handled by the counties themselves.

The Supreme Court of Florida, in the case of *Amos vs. Mathews*, 126 So. 308 (text P. 336) said that the State Board of Administration is clothed with nothing but administrative duties; that the County Commissioners have full powers to fix the rate and make the levy of all ad valorem taxes and to administer the general affairs of the counties and Special Road and Bridge Districts. From this, as I take it, the court has by its construction determined that it is the duty of the County Commissioners under the law to administer the general affairs of the county and of the Special Road and Bridge

Districts, and this would include all necessary actions looking to the collection of Interest and Sinking Fund moneys.

I would suggest, therefore, that if any action is to be taken that the same should be done by, and in the name of, the Board of County Commissioners of Brevard County.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE BOARD OF ADMINISTRATION—CERTAIN CLAIM NOT
ALLOWED AS "A PREFERRED CLAIM"

July 17, 1931.

Dear Sir:

I am returning herewith correspondence submitted to this office by you, relative to the claim of the State Board of Administration against the First National Bank of Perry, Florida, which grew out of your deposit of the note of A. V. Weaver, endorsed by T. L. Weaver, for the sum of \$5,000.00 and interest, which you had deposited in the First National Bank of Perry for collection.

We have carefully considered the correspondence submitted, and we observe that the Comptroller of the Currency has held that the claim of the State Board of Administration against the receiver of the First National Bank of Perry could not be allowed as a preferred claim, for the reason that the proceeds of the note could not be traced into the hands of the receiver of the bank.

It is our understanding that it is a general rule that where a claim against an insolvent bank is made by a depositor, that unless the deposit can be traced into the hands of the receiver that it cannot be allowed to be a preferred claim, and it is upon this ground that the Comptroller of the Currency has based his decision regarding the claim of the Board of Administration in this case. Federal court decisions have been submitted in support of the position of the Comptroller of the Currency, which we have read and considered, and it appears that the position of the Comptroller of the Currency is well sustained by these court decisions.

In view of our conclusions in the premises, we are of the opinion that it would be futile to bring suit against the receiver of the bank at this time.

Trusting you will find this to be satisfactory, and with best wishes, I am,

Yours very truly,

CARY D. LANDIS,
Attorney General.

TRUST SECURITIES—DISPOSITION OF WHEN COMPANY BE-
COMES INSOLVENT

July 24, 1931.

Dear Sir:

I have held your letter of the 13th instant relative to surrendering trust securities deposited with and held by you under the provisions of Section 4188 of the Revised General Statutes of Florida, until I could study the opinion of the Supreme Court in the recent case of Florida Bank and Trust Company vs. Lynn S. Nichols et al.

In that case the court expressed the view that the funds held by you under Section 4188, Revised General Statutes of 1920, must be placed to the credit of the common fund of cash and securities held by the liquidator for the benefit of all the particular trusts, and that they must be distributed in the same manner as funds held by him under Sections 6128 and 6129, Compiled General Laws of Florida, 1927.

The court further held that:

"In requiring that securities deposited under Section 4188, Revised General Statutes of 1920 * * * be held by the State Treasurer subject to the payment of any judgment or decree which may be rendered against the trust company depositing them, the law had in contemplation all judgments or decrees secured against the trust company, while it was a live and going concern, without reference to the character of the claim on which such judgment or decree is rendered, so long as predicated on some act or transaction of the trust company as such. This rule may be modified or may not apply when the trust company making such deposit has failed and been turned over to a liquidator for liquidation."

Then follows the statement as to the view of the court first above referred to.

In view of what was said by the Court in the case referred to, it is my opinion that you would be justified and perhaps required, when a trust company or bank doing a trust business becomes insolvent and is taken over by the Comptroller and a liquidator appointed and qualified therefor, to turn over to such liquidator all trust securities deposited with you by such bank or trust company under the provisions of Section 4188 of the Revised General Statutes, to be liquidated by such liquidator in accordance with the view expressed by the court in said case, taking therefor the receipt of such liquidator.

In such receipt it would be well to state that the bank or trust company depositing the securities had become insolvent and was taken over by the Comptroller and a liquidator appointed and qualified therefor, and that such securities are surrendered and turned over to the liquidator to be by him liquidated as provided by law.

This seems a happy solution of the many controversies that have arisen in the past in connection with such securities, and will prevent the recurrence of such controversies in the future.

I recommend and advise, therefore, that this course be taken in all cases where you hold securities deposited by banks or trust companies which are now in the hands of receivers or liquidators for liquidation, and that in the future, as soon as a receiver or liquidator for a bank is appointed, that such securities be released in accordance with the provisions of this opinion.

I am returning the files attached to your letter of the 13th instant.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BOARD OF ADMINISTRATION—DISPOSITION OF FUNDS UNDER
PROVISION OF SENATE BILL NO. 40-XX, CHAP. 15770

July 24th, 1931.

Dear Sir:

This refers to your favor of July 23rd, relative to the disposition of the sum of \$14,402.65 now in the hands of the Board of Administration.

Senate Bill No. 40-XX has been enacted into law, and it is my opinion that this Act now being a law authorizes and directs that you may use this money for the purpose of paying the principal and interest coupons upon any bonds or time warrants issued and now outstanding under and by virtue of Chapter 9657, Acts of 1923; Chapter 11280, Acts of 1925; Chapter 11787, Acts of 1925, and Chapter 13513, Acts of 1927, and that you will be within the law in complying with the terms of said Senate Bill No. 40-XX.

Very respectfully,

CARY D. LANDIS,
Attorney General.

MUTUAL FIRE INSURANCE BUSINESS—CANNOT BE OPERATED
UNDER LAW AS NON-PROFIT SHARING CORPORATION

July 28, 1931.

Dear Sir:

This is in response to your favor of July 13th. You enclose with your communication copy of application of Reliance Mutual Benefit Association, and copy of certificate in Reliance Mutual Benefit Association, and you ask my opinion as to whether or not this corporation operating under a charter from the Circuit Court of Hillsborough County as a non-profit sharing corporation are doing such a business as would be held to be an insurance business, and whether they would be required to comply with the laws of the State of Florida relating to insurance companies.

It is my opinion that according to the application and certificate of the Reliance Mutual Benefit Association that they are doing a mutual fire insurance business, and that to continue to do business within the law they

will be required to comply with the laws of the State of Florida relating to mutual fire insurance companies. This question has recently been decided in the Circuit Court of Duval County, where the court held that a company who was doing a similar business and issuing a similar certificate, were engaged in the mutual fire insurance business, and that they could not lawfully operate in this manner under a charter granted by the Circuit Court as a non-profit sharing corporation.

Very respectfully,

CARY D. LANDIS,
Attorney General.

GASOLINE TAX—INTERPRETATION OF LAW IN RE DISTRIBUTION OF FUNDS BY BOARD OF ADMINISTRATION

July 31, 1931.

Dear Sir:

This is in response to your request for my opinion with reference to the administration of the funds and moneys credited to the various counties of the State and paid to the State Treasurer as ex-officio County Treasurer, under Section 9 of House Bill No. 65-X, which is now Chapter 15659, Laws of Florida, Acts of 1931.

This section refers to the administration by the Board of Administration of these moneys "as provided by law." It is my opinion that this refers to Chapter 14486, Acts of 1929, and the administrator of these funds under this Chapter has been interpreted and determined by our Supreme Court in the case of Ernest Amos, as Comptroller, etc., vs. John E. Mathews, etc., in an opinion filed January 23, 1930, wherein the court speaks of the proceeds of the second and third gas tax levied by Chapter 14575, Acts of 1929, after apportionment to the several counties in proportion to the amounts collected therein respectively and says:

"These funds must be applied by the Board of Administration created by Chapter 14486, Acts of 1929, to the payment of county and district road and bridge bonds issued and outstanding on April 1, 1929, so far as is necessary to meet current annual requirements in the several counties for interest and principal or sinking funds of the participating bonds to which such monies are applicable, as directed by Chapter 14486."

Section 14 of Chapter 14486, Laws of Florida, with reference to the application of these moneys, says:

"In so applying moneys to the credit of each county, except sinking funds accounts, there shall be apportioned to each subdivision (whether the county itself or road and bridge district therein) *such proportion of the moneys* as the amount of the participating bonds of each subdivision bears to the aggregate amount of the participating bonds to which the accounts are applicable."

The court having said that these funds and moneys must be applied by the Board of Administration created by Chapter 14486, it is my opinion, that the above quotation from Section 14 is the rule by which these funds should be distributed.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

GASOLINE TAX—INTERPRETATION OF LAW IN RE DISTRIBUTION OF FUNDS BY BOARD OF ADMINISTRATION

August 17, 1931.

Dear Sir:

This is in response to your request for my opinion with reference to the administration of the funds and moneys credited to the various counties of the State and paid to the State Treasurer as ex-officio County Treasurer under Section 9 of House Bill No. 65-X, which is now Chapter 15659, Laws of Florida, Acts of 1931.

Each county shall participate in the distribution of the three cents of the second gas tax until such amount equals the amount furnished, advanced, paid out, distributed or expended by such county or road or bridge district in the construction or building of State roads within such county, and when this has been done, the county shall continue to participate in the distribution of this three cents of the second gas tax in that the same shall be paid into a State Road License Fund to be used by the State Road Department for construction of those State roads which were at the time of the passage of the Act designated as first, second or third preferential system of State roads. Thereafter this three cents of the second gas tax goes into the State Road License Fund to be used by the State Road Department to be expended by it as may be provided by law.

These moneys derived from the three cents of the second gas tax are credited to the various counties of the State and paid to the State Treasurer as ex-officio County Treasurer and *shall be administered by the Board of Administration as provided by law*. Thus it is, that to determine how the same shall be administered "as provided by law," it is necessary to refer to Chapter 14486 of the Acts of 1929, and to Section 14 thereof on page 945 of said Act.

Under this law it is the duty of the Board to pay all interest and principal that is due and provide proper sinking funds, and when all of this is done for each year then the last clause of the Act applies, which clause is as follows:

"Any surplus in any county accounts, except Sinking Fund accounts after such application, shall be remitted to the county for the use of which such county account was created and shall be used by such county only in the construction and—or maintenance of roads therein."

Thus it is that after meeting the requirements of the county under the law each year, the surplus is remitted to the county and it is then the problem of the County Commissioners as to the expenditure of such surplus. I think a number of laws have been passed in an endeavor to control the expenditure of this surplus when it is once remitted to the county, but that is the problem of the county and not of the Board of Administration.

It is my opinion that your office will unquestionably have to open up an account with each county with reference to the amount of money expended in State road construction for which each county is entitled to credit and then when this is done, all money paid out in behalf of the county, either in paying accumulated interest or principal maturity, or by way of surplus will be charged up against the credit of each county respectively.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SECURITIES, SALE OF—INTERPRETATION OF STATUTE

September 4, 1931.

Dear Sir:

This refers to your favor of August 20th, and specifically has reference to your inquiry as to Sub-Section H of Section 4 of Chapter 14899, Acts of 1931.

This Act known as the law relating to the sale of securities exempts any securities issued by "any insurance company under the supervision of the officials of this State," as well as other classes of securities. It is my opinion that the sale of securities by an insurance company which has procured a charter, or a foreign insurance company which has obtained a permit, but which has not at the time it offers stock for sale procured a certificate of authority from the Insurance Commissioner as such company to engage in the insurance business in Florida would not be excluded by the terms of the Act, but would come within the terms of the Act, should qualify with the Florida Securities Commission before such stock is sold.

Very respectfully,

CARY D. LANDIS,
Attorney General.

SECURITIES HELD BY STATE TREASURER—CONSTRUCTION OF LAW

October 16, 1931.

Dear Sir:

I have your letter of the first instant, asking to be advised whether the securities to be deposited by the American Surety Company, surety on the bond of the defendant in the above entitled cause, are subject to sale under the levy heretofore made on you by the United States Marshal of this district, or whether other and additional process of the court must be issued before execution may be satisfied.

I have read and studied the files attached to your said letter, also letter addressed to me by Messrs. Hendricks & Hendricks, attorneys at law, Miami, Florida. It appears from the correspondence, the defendant, Fidelity Union Fire Insurance Company, in lieu of depositing securities or money to qualify to do a fire insurance business in the State, elected under Section 6242 of the Compiled General Laws of Florida, 1927, to post a surety bond which was executed by the American Surety Company, in the sum of twenty thousand dollars. It further appears that the plaintiff, Morrow, has obtained a judgment in the United States District Court for the Southern District of Florida, against the defendant in the sum of \$5,464.67, after due service of process upon the institution of suit in said court. I am advised orally by your department that the American Surety Company has now deposited with you bonds in the sum of six thousand dollars to protect this judgment.

It appears to be the contention of Messrs. Snedigar & Bays, attorneys at law, Miami, Florida, that the securities posted by the American Surety Company cannot be reached by levy of the execution issued in above cause, but that before the American Surety Company can be compelled to pay, a new suit must be instituted and prosecuted to final judgment and execution against the American Surety Company.

You can understand that it places me in a rather embarrassing situation to be called upon to express an opinion on a matter which is not only a subject of controversy and differences of opinion between eminent counsel, but is also in litigation in the court. However, the law makes it my duty to advise State officers in matters relating to their official duties, and it is for this reason that I venture an opinion as to your duty in the matter.

Section 6242, Compiled General Laws of Florida, 1927, provided that if a fire insurance company shall fail to pay in any of liabilities on its policies, after said liabilities shall have been ascertained by the judgment or decree of the court having jurisdiction, the State Treasurer shall, upon application of the party to whom the debt or money is due, proceed to sell at public auction such an amount of the said bonds as will pay the said judgment and expenses of sale and out of the proceeds of the sale pay said sums and expenses. It is further provided that the party making said application shall give to the company or its agent in this State twenty (20) days notice of his intention to apply for said sale of bonds to the said Treasurer.

It is my view of the provisions of the Statute that the same does not contemplate another suit against the surety on the bond of the fire insurance company, but that the securities or bonds held by you are subject to the payment of the judgment rendered against the fire insurance company. I think however, that the twenty (20) days notice should be given by the judgment creditor of his intention to apply to you to sell securities held by you, in order to give the defendant, Fidelity Union Fire Insurance Company, an opportunity to pay the judgment or give the surety an opportunity to pay the judgment and take down the bonds deposited. If and when the twenty days notice of intention to apply to you for the sale of said bonds is given by the judgment creditor, and the failure of the defendant fire insurance company

and—or the surety company to pay the judgment, I think it would be your duty to proceed to sell said bonds at public auction for such amount thereof as will be necessary to pay said judgment and judgment costs and expenses of sale, and out of the proceeds of the sale to pay the judgment, costs and expenses.

I am returning the files attached to your letter of the first instant.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

STATE MONEYS DEPOSITED IN BANKS—CONSTRUCTION OF
LAW IN RE ALLOCATION OF INTEREST

October 19, 1931.

Dear Sir:

Section 147 of the Revised General Statutes of 1920 (Section 177, Compiled General Laws of Florida, 1927) provided that interest earned on State moneys deposited in banks should be credited on account of the general revenue fund.

The Legislature by Chapter 12012, Acts of 1927, enacted that two-thirds of all interest collected on State funds deposited in the various banks of the State should be deposited in a special fund to be known as the "Public Free School Fund," and one-third in a special fund to be known as a "Permanent Building Fund for State Institutions of Higher Learning, Experiment Stations, and other Institutions under the management of the State Board of Control."

By Chapter 14573, Acts of 1929, the Legislature again re-enacted that two-thirds of all interest collected on State funds deposited in the various banks of the State should be deposited in the State Treasury to the credit of the "Public Free School Fund," but did not mention the other one-third of such interest. This Chapter repealed all laws and parts of laws in conflict therewith.

By Chapter 15659 (House Bill 65-X), Acts of 1931, Chapter 14573, Acts of 1929, was repealed. This did not, however, repeal the requirement that one-third of all interest on State funds deposited in the banks of the State, shall be credited to the Permanent Building Fund, and it is my opinion that two-thirds of all interest on State moneys deposited in the banks of the State should be credited to the General Revenue Fund of the State, and the other one-third to the "Permanent Building Fund."

Yours very truly,

CARY D. LANDIS,
Attorney General.

BONDS, BRIDGE—CANNOT BE USED FOR PAYMENT OF COUNTY
AND STATE TAXES

October 19, 1931.

Dear Sir:

This refers to your favor of the 19th instant, and I am returning you herewith letter from W. J. Gardiner, Daytona Beach, Florida, under date of October 12, 1931, together with copy of resolution proposed but which was never adopted by the Board of County Commissioners of Volusia County, Florida.

It seems that one resolution has been adopted whereby certain bond issues were undertaken to be designated as county wide bond issues, and, therefore, the bonds of the district so designated were to be accepted in payment of delinquent tax payments, and the resolution herewith enclosed, which has not been adopted, is a resolution undertaking to repeal the prior resolution. What are termed bridge warrants and bonds are referred to in the resolution as having been authorized by Chapters 11280, 9657, 11277 and 13513 of the Laws of Florida. By reference to these chapters of our law, it will be seen that these warrants and bonds were issued for the purpose of raising money to be used to purchase and otherwise improve, etc., certain definite bridges.

The law in each instance contemplates that the bonds shall be paid by the collection of tolls, and there is a mandatory duty upon the Commissioners to levy tolls to pay off these warrants and interest coupons as they mature. They are, therefore, county wide warrants in the sense of the tolls, when they are properly laid and collected, are not sufficient to take care of these warrants, etc., and a county wide levy may be made. In theory, however, and in limitation of purpose, it is clear that these were not contemplated to be obligations that would have to be finally taken care of by county wide levy; and, therefore, it is clearly shown, in my opinion, that these bridge bonds and warrants should not be and would not fall within the class of bonds that should be used under the law, even though designated and attempted to be designated by the County Commissioners, as such, for the payment of county and State taxes.

As to the \$110,000.00 of time warrants issued under Chapters 9,648 and 9,649 and the Mediterranean Fruit Fly Eradication bonds, these two issues are unquestionably county wide warrants and bonds, and may be used to pay county and State taxes, if the County Commissioners pass the proper resolution pertaining thereto.

Very respectfully,

CARY D. LANDIS,
Attorney General.

BONDS DEFAULTED—METHOD OF PAYMENT

March 1, 1932.

Dear Sir:

This is in reply to your favor of the 18th ultimo. As I understand it, the question which you propound is as follows:

In one of the bonding districts of the State there is a series of bonds in default. These bonds are in default as to principal, all interest coupon having heretofore been paid. That there is sufficient money on hand with which interest could be paid on these defaulted bonds.

It is my opinion that you should not apply this money to the payment of interest on these defaulted bonds. There are no coupons to be surrendered to you as a voucher and there may be some question as to the amount of interest which these bonds would bear. In other words, the interest on these defaulted bonds is in the nature of a float and it is my opinion that there should be some court order or definite adjudication as to what should be paid, or unless, of course, if the bonds were refunded then interest would be paid on the refunding bonds as per the coupons attached thereto.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BONDS, REFUNDING, OKEECHOBEE COUNTY—APPLICATION OF
LAW IN RE ALLOCATION OF GAS TAX

April 26, 1932.

Dear Sir:

This refers to your favor of the 23rd instant relative to a refunding bond issue of Okeechobee County in the amount of \$98,000.00. The question presented is whether or not the Board of Administration shall now add to the set-up of bonded indebtedness of Okeechobee County this refunding issue of \$98,000.00 so that this refunding issue may participate in the allocation of moneys under Chapter 14486 of the Acts of 1929. Section 5 of Chapter 14486, of the Acts of 1929, is as follows:

"Section 5. It shall be the duty of the Clerk of the Board of County Commissioners of each county to furnish to the State Comptroller of the State of Florida within thirty days after the passage of this Act a complete list of each and every issue of county bonds for roads, or road and bridge purposes and bonds of special road and bridge districts within such county outstanding at the time of the adoption of this Act, which list shall contain * * * etc."

Section 19 of the Act provides what bonds shall be permitted to participate, and Section 18 of the Act sets forth the intention of the Act to cover "Indebtedness authorized and outstanding at the time of the passage

and approval of the Act issued for the purpose of constructing roads and bridges within the several counties of the State, etc."

It seems to me clear that in order for any county to have its road and bridge obligations share in the benefits of the Act, that those obligations must have been reported to the Board of Administration in accordance with Section 5 of the Act, and if not so reported, they do not share, and that any report of such obligations made after the expiration of the time set forth in Section 5 will be too late to be included in the set-up. I find no provision in the law authorizing any subsequent report of indebtedness to be added to the set-up as provided in Section 5. It is true that refunding bonds are authorized, but it is my opinion that refunding bonds in order to come within the terms of this Act must be a refunding of bonds that had been properly reported and set-up by the Board of Administration.

Section 9 of the Act provides for the refunding of any county debt issued for roads or for road and bridge construction, provided, that such refunding bonds shall bear a lower rate of interest than the bonds to be refunded, and shall not be sold at less than par, plus accrued interest from date of issue. This refers to the refunding of the remaining part of the whole issue. The same section of the Act, to-wit: Section 9, also provides that if there are not sufficient funds available to meet the principal maturities in any one year, refunding bonds may be issued covering such maturities as cannot be met in that year, the said refunding bonds to be delivered at any time within ninety days prior to such maturities, at any rate of interest not exceeding 6% per annum, and to sell the same at not less than par, plus accrued interest from the date of issue. And, this Section 9 also provides that the maturity of all refunding bonds shall be approved by the Board of Administration which, in my opinion, means that these refunding bonds cover bonds that have already been reported within the time allowed by law to the Board of Administration.

Therefore, it is my opinion that if the \$98,000.00 refunding issue of Okeechobee bonds cover indebtedness which was not reported to the Board of Administration, as required by Section 5, these refunding bonds cannot be considered by your Board, and will not be entitled to the allocation of moneys as provided by the Board of Administration Act. If this \$98,000.00 refunding issue includes such bonds that have been properly reported to the Board of Administration, and the issue of the refunding bonds complied with Sections 9 and 16 of the Act, then it is my opinion that the refunding bonds that had theretofore been properly reported to the Board of Administration under Section 5, that then to that extent these refunding bonds should be considered by the Board of Administration and they should participate in the benefits of the Act to that extent, and to that extent only.

I beg to return you herewith all enclosures handed to me with your favor of the 23rd instant.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BOND TRUSTEES OCEAN SHORE IMPROVEMENT DISTRICT—
BOARD OF ADMINISTRATION NOT AUTHORIZED TO
REMIT CERTAIN MONEY

May 12, 1932.

Dear Sir:

Replying to your letter of the 6th instant, with respect to the request of the Secretary of the Board of Bond Trustees of Ocean Shore Improvement District that the Board of Administration return to the Bond Trustees of said District \$3,000.00 to cover the actual expenses and costs of operation of said District accruing during the next six months, I beg to advise as my opinion that neither Chapter 14486, Acts of 1929, nor Chapter 14776, Acts of 1931, contemplate that funds placed in the hands of the State Treasurer as ex-officio County Treasurer for the payment of principal and interest of bonds of said district, can be used for any other purpose than that of paying principal and interest of bonds of the respective county or district, and the costs and expenses incident to the handling of said funds by the Board of Administration.

All costs and expenses of operating the District should be taken care of by the District, and the funds placed with the State Treasurer as ex-officio Treasurer of the District are presumed to be net for the payment of interest and principal of bonds issued by and outstanding against said District.

It is my opinion, therefore, that you are without authority to comply with the request upon the Board of Administration to remit to the Bond Trustees of Ocean Shore Improvement District \$3,000.00 to cover the actual expenses and costs of operation accruing during the next six months.

Very truly yours,

CARY D. LANDIS,
Attorney General.

BONDS—WHEN ACCEPTED IN EXCHANGE FOR TAX CERTIFI-
CATES BECOME PROPERTY OF STATE, COUNTY
OR MUNICIPALITY

June 28, 1932.

Dear Sir:

At your request I beg to advise that bonds and coupons received and accepted in exchange for tax certificates under Chapter 15054, Laws of Florida, Acts of 1931, authorizing the acceptance of certain bonds and interest coupons and the cancellation of tax certificates for unpaid taxes levied for the year 1929 and prior years, become the property of the State and county or municipality, as the case may be, and the party using such bonds or interest coupons in the payment of the taxes, as provided in said Chapter, are not authorized under the law, and cannot recall the same by substituting other bonds or interest coupons therefor.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BONDS—FIDELITY, OR SURETY—ORDER OF COURT AUTHORITY
IN CERTAIN MATTER

June 28, 1932.

Dear Sir:

Replying to your letter of the 25th instant, Section 6303 of the Compiled General Laws of Florida, 1927, provides that whenever final judgment has been rendered against any surety company on a fidelity or surety bond, and such surety company fails to pay the same within thirty days, the State Treasurer shall upon notice of such failure retain so much of the bonds deposited with the State Treasurer under Section 6302 of the Compiled General Laws of Florida, as may be necessary to cover said judgment and costs, subject to the order of the Court trying the case in which said judgment is rendered.

Upon the entry of an order of the Court in which said judgment is entered, directing the State Treasurer so to retain and make safe of said bonds or so much thereof as may be necessary to cover said judgment and costs, it is the duty of the State Treasurer to comply therewith. The State Treasurer may rely upon said order directed to him as his full authority in said matter.

The order of Judge E. C. Love, dated 23rd day of June, 1932, in the case of Board of Public Instruction of Dade County, Florida vs. W. V. Knott as State Treasurer, etc., et al, modifying the temporary injunction issued in said cause on the 15th day of April, 1932, releases you from said injunctive order of April 15, 1932, insofar as said temporary injunction restrains you from paying the judgment of P. F. Connelly, doing business as P. F. Connelly Paving Company, against Southern Surety Company, as commanded by the order of Judge W. T. Harrison, dated April 14, 1932, in that certain cause in the Circuit Court of the Eighteenth Judicial Circuit of Florida in and for Manatee County, wherein County of Volusia, State of Florida, for the use and benefit of P. F. Connelly, doing business as P. F. Connelly Paving Company was plaintiff, and Southern Surety Company, a corporation, was defendant, No. 1597—Law, ordering and commanding you to pay the judgment of P. F. Connelly Paving Company, and nothing now remains but for you to comply with said order, unless, of course, the order of Judge Love, dated June 23, 1932, modifying his injunctive order of April 15, 1932, is appealed from and superseded before said order of Judge Harrison can be complied with.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INSURANCE COMPANIES—NOT SUBJECT TO CERTAIN TAX

September 19, 1932.

Dear Sir:

This refers to your favor of September 14.

I understand the Inter-Southern Life Insurance Company of Louisville, Kentucky, heretofore authorized to transact business in this State has been placed in the hands of the receiver by the Kentucky Courts, and that the Court having jurisdiction has since approved a re-insurance agreement between the receivers of Inter-Southern Life Insurance Company of Louisville, Kentucky, under which the policy obligation of Inter-Southern Life Insurance Company are re-insured subject to certain conditions by Kentucky Home Life Insurance Company. I further understand that the Kentucky Home Life Insurance Company does not desire to procure a certificate of authority or license for the purpose of writing insurance in this State, but that it is considering the advisability of qualifying in this State under the law governing foreign corporations and establishing within the State of Florida a branch office solely for the purpose of collecting renewal premiums on the present outstanding business of the Inter-Southern Life Insurance Company assumed under the re-insurance agreement.

Under this specific state of facts and with the specific understanding that there is to be no solicitation or writing of new business in this State, it is my opinion that the obligation of premiums on business heretofore written will not subject the company to the taxes provided under Section 1182, Compiled General Laws of Florida, 1927, and I do not see how the establishing of such an office would violate the insurance laws of this State.

Very truly yours,

CARY D. LANDIS,
Attorney General.

INSURANCE—CONSTRUCTION OF STATUTE IN RE REQUIREMENTS OF COMMISSIONER

October 18, 1932.

Dear Sir:

The above section of the statute directs the State Treasurer as Insurance Commissioner to require companies writing insurance against loss by fire and other hazards to set aside the unearned portion of premiums in force, computed according to the usual methods, for the protection of their policy holders.

My construction of this provision of the law is that the "usual methods" means those methods applicable to all companies writing this particular class of business and not that applicable to any particular company. This law being

in effect at the time the association organized under the law of Illinois governing Lloyd Insurers was admitted into the State, as stated in your letter, they are bound by the law of Florida as a condition to their right to transact such business in this State.

Very truly yours,

CARY D. LANDIS,
Attorney General.

FOREIGN INSURANCE COMPANIES—MUST COMPLY WITH
SECTION 6302, C. G. L.

December 1, 1932.

Dear Sir:

I note from your letter of the 29th ultimo, that your department has recently authorized Auto Cab Mutual Indemnity Company, New York, N. Y., to operate in this State under the law governing foreign insurance companies.

You quote Article III of the Charter of this company as to the class of business to be undertaken and the insurance it shall have authority to make, and request my advice as to whether it will be necessary for this company to make a deposit with you, as required under Section 6302 of the Compiled General Laws of Florida, 1927.

The Supreme Court of Florida in the case of State ex rel. Union Indemnity Company vs. Knott, State Treasurer, 143 So. 221, on rehearing, 143 So. 233, in construing the character of an automobile public liability insurance policy written by New York Indemnity Company in favor of Florida Motor Lines, Inc., as to whether the same was protected by the deposit made by New York Indemnity Company, under the provisions of Section 6302, Compiled General Laws of Florida, said:

"In the original opinion in this case we said: 'New York Indemnity Company wrote the liability insurance and became surety for the liability of Florida Motor Lines, Incorporated, under its authority to do a surety business in the State of Florida and by Section 4341, Rev. Gen. Stat., Section 6304, C. G. L., it is estopped to deny its corporate power to assume this liability.'

"It may be more accurate to say: New York Indemnity Company wrote the liability insurance and thereby bound itself to indemnify Florida Motor Lines, Incorporated, under certain conditions named in the contract, policy, or bond under its authority to do business in this State as provided in Chapter 4671, Acts of 1899, as amended by Chapter 7867, Acts of 1919, and Chapter 12321, Acts of 1927, the same being Compiled General Laws, Sections 6300 to 6306, Comp. Gen. Laws, inclusive, and by such statutes it is estopped to deny its corporate power and authority to execute and deliver such contract, policy or bond."

If the execution of the public liability insurance policy by the New York Indemnity Company, in favor of Florida Motor Lines, Inc., was under its authority to do business in this State as provided in Sections 6300 to 6306, Compiled General Laws of Florida, as was said by the Court, it would seem to follow that the securities deposited by the New York Indemnity Company, as required by Section 6302, protected that class of business and if those securities did protect that particular policy, it would also follow that before a company can engage in that particular line of business it is required to comply with the conditions of Section 6302, Compiled General Laws.

This position seems to find support in the holding of the Court in that the Union Indemnity Company was allowed to take down the securities deposited by the New York Indemnity Company solely because it had assumed all outstanding claims, known or unknown, against New York Indemnity Company, including that certain auto public liability insurance policy heretofore issued by New York Indemnity Company in favor of Florida Motor Lines; Inc.

Upon the basis of this authority it seems to be the law that before any company can engage in this State in writing public liability insurance policies, contracts or bonds, such company must first deposit with you bonds of the United States, or bonds of any State of the United States, the market value of which amounts to \$75,000.00.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BOARD OF ADMINISTRATION—JUDGMENT AGAINST LEON
COUNTY AUTHORIZED TO BE PAID

December 28, 1932.

Dear Sir:

This refers to your favor of the 27th instant, together with enclosures, all of which pertain to the payment of judgment and costs obtained by the Receiver of the Seaboard Air Line Railway Company against the County of Leon. You request my formal opinion as to whether or not you as State Treasurer are authorized to honor the State Comptroller's warrant drawn in payment of judgment and costs and expenses as set forth in your letter.

Chapter 15311, Laws of Florida, Acts of 1931, authorizes the Board of Administration to pay such judgment by warrant drawn by the State Comptroller as Secretary of the Board of Administration upon the State Treasurer as County Treasurer ex officio, and to pay the costs, expenses and attorney's fees in connection therewith by such warrant upon presentation of bill for such costs, expenses and attorney's fees approved by the Board of County Commissioners of Leon County in open session. The resolution of the

Board of County Commissioners authorizes the payment of the judgment, as well as the bill for attorney's fees, and the item of expense of \$9.00, witness fees for Thomas Roberts, also the costs, which are a part of the judgment in the sum of \$29.65. All the papers, including the power of attorney and satisfaction of mortgage seem to be in due and regular form, and under the law above referred to it is my opinion that you will be authorized to pay this judgment and the items above enumerated out of such funds as you have in your hands which constitute the unexpended balance of the proceeds from the sale of the issue of \$1,500,000.00 of Road Bonds of Leon County, dated July 1st, 1925.

I would suggest that you have Wm. Blount Myers receipt his bill upon payment, and also suggest that you have the satisfaction of judgment properly recorded.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

COMMISSIONER OF AGRICULTURE
HON. NATHAN MAYO

COMMERCIAL FEED STUFF MIXTURES—COLLECTION OF
INSPECTION TAX ON PRIVATE FORMULA

January 8, 1931.

'Dear Sir:

This is in answer to your request of December 27th for my opinion on the above subject. From the statement of facts contained in your letter, the proposition involved is whether or not the question of feeding stuff in Florida is required to pay the inspection tax on a special mixture of feed put up for an individual consumer, in cases where the feed concern makes a practice of mixing feeds for dairymen and poultrymen using the purchaser's own formula and charging them for the mixing, the mixture not being offered for sale on the general market but only put up for individuals who especially require the same.

The statute on the subject provides that every manufacturer, importer, agent or seller of commercial feeding stuffs shall pay to the State Treasurer a fee of 25c for each and every ton offered for sale in this State, unless such inspection fee has previously been paid by the manufacturer or importer of the feed stuff in the first instance, in which event the last mentioned dealer or agent is not required to again pay an inspection tax on the same feed stuff. Consequently, the answer to your question is that the inspection tax is collectible on all of the mixtures your letter refers to, unless it can be shown that such inspection tax has already been paid on the materials out of which the mixture is made up. The purpose of the law is

not only to require a correct analysis and grading of feed stuffs, but is also to provide sufficient revenue to enable the inspection laws to be executed.

I am of the opinion therefore that the inspection tax should be collected under the circumstances mentioned in your letter, unless already previously paid.

Yours very truly,

FRED H. DAVIS,
Attorney General.

COMMERCIAL FEED STUFF MIXTURES—REGISTRATION OF SPECIAL FORMULA

February 20, 1931.

Dear Sir:

In my previous letter of January 8th I advised that under Section 3259, Compiled General Laws, the inspection tax on commercial feed stuffs is collectible on all of the mixtures sold or offered for sale in Florida, in every case where it has not already been paid on the materials out of which the mixture is made up. My previous opinion, of course, refers only to the right to collect the inspection tax under Section 3259.

The requirement that managers and dealers shall file with the Commissioner of Agriculture a paper giving the name and brand and guaranteed analysis under oath of the commercial feeding stuffs, does not necessarily apply to all cases where the inspection tax is collectible under Section 3259, which is a separate Section.

Under the language and terms of Section 3258 it is only necessary to register commercial feed stuffs which are being sold or offered for sale under a special name, brand or guaranteed analysis. Section 3258 refers to "commercial feeding stuffs offered for sale."

The special mixture mentioned in your communication are evidently not mixtures which are "offered for sale" but are mixtures which are actually sold pursuant to a special demand for the particular mixture. It is, therefore, not necessary to register or tag commercial feeding stuffs which are not to be offered to the general public for sale after being registered and tagged. That is, this requirement does not apply to stuff which is already sold pursuant to order at the time the dealer undertakes to dispose of the same. The purpose of the inspection tax is to provide revenue sufficient to carry on the inspection organization and pay the cost of making inspections when necessary.

For this reason, the tax is applicable on all feed stuffs which may be offered for sale (that is, kept in stock for sale and actually sold) whether under special mixture or under particular brand or guaranteed analysis.

Trusting this explains the matter, I am

Yours very truly,

FRED H. DAVIS,
Attorney General.

KEROSENE—COLLECTION OF CERTAIN INSPECTION TAX

March 1, 1931.

Dear Sir:

Under Section 3956, Compiled General Laws, only that kerosene which is sold, offered or exposed for sale in this State is subject to inspection and analysis as provided for by the kerosene and oil inspection law.

From the file that you have submitted to me, it appears that the Atlantic Coast Line Railroad purchased in the State of Georgia from the Standard Oil Company, 1353 gallons of kerosene, which were purchased at Savannah and shipped into the State of Florida for the use of the Coast Line and not to be sold, offered or exposed for sale in this State.

If such is a fact I am of the opinion that you have no right to collect the tax demanded, because the statute only permits the tax to be collected upon that oil or gasoline which is intended for sale, offered for sale or exposed for sale in Florida. In this case it has been clearly shown that the kerosene in question was purchased in another State and was brought here under circumstances which indicate that it was never intended at any time to be sold, offered or exposed for sale in Florida.

The situation would be different if some oil company had bought this same kerosene and brought it into Florida for the purpose of holding it for sale. In such last mentioned case the fact that the kerosene was purchased somewhere else would not exempt it from the inspection tax in Florida. But the inspection law does not apply to kerosene and oil in the hands of consumers, which was not sold in Florida and which is not brought here to be sold or held for sale.

Trusting this answers your request for my opinion on the subject, I am

Yours very truly,

FRED H. DAVIS,
Attorney General.

ARSENIC—LAW CONSTRUED AS TO USE

March 19, 1931.

Dear Sir:

At your request I have given careful consideration to the subject matter of the letter of Hon. B. L. Holland of Bartow to you under date of March 17, 1931, with relation to the question of your authority to prescribe rules and regulations for the enforcement of the provisions of Chapter 14485, Laws of Florida, Acts of 1929.

Section 1 of the act makes it unlawful for any person, partnership, association or corporation, owning, managing or tending and cultivating citrus groves or trees to use arsenic or any of its derivatives or any combination, compound or preparation containing arsenic as a fertilizer or spray on bearing citrus trees, except when so ordered by the Federal Government or State Plant Board for the purpose of destroying the Mediterranean fruit fly.

The purpose of this act is to conserve and protect the health of society, and that it is well within the police power of the State is not to be doubted.

Section 3 of the act vests the citrus fruit inspectors employed by you with the power, authority and duty of certain inspections, looking to the enforcement of the provisions of the act, subject to the provisions of law and the rules and regulations prescribed by you. Such inspectors are specifically clothed with the authority to inspect citrus fruit at any packing house or other place, where citrus fruit is being received or prepared for sale or transportation, after which follows a general or blanket provision giving such inspectors the authority and making it their duty to carry out the provisions of the act in general under your direction and supervision, and subject to the provisions of law and rules and regulations prescribed by you.

It is my opinion, therefore, that under this general provision of Section 3 of the act you have the authority to prescribe and promulgate such reasonable rules and regulations as may be necessary to carry out the purpose of this act and make effective the legislative intent for its enforcement, and that in doing so you may require an inspection of all fertilizers and/or sprays used on bearing citrus trees and the effect on said trees of the fertilizers and/or sprays used thereon, and that such inspection may require the taking of samples of such fertilizers and/or sprays and specimens of foliage from bearing citrus trees on which fertilizers and/or sprays have been used, and that such samples and specimens may be taken at any time and in any reasonable manner consistent with the rights of the owner of such trees.

In my opinion such regulations would be reasonable and well within the police power of the State and the legislative intent for the enforcement of said act.

Section 2 of the act makes it unlawful to sell any citrus fruit of any variety containing any arsenic or any compound or derivative of arsenic.

It is just as reasonable to assume that the Legislature intended to enforce the provisions of Section 1 of the act against the use of arsenic in fertilizer or sprays used on bearing citrus trees by an inspection of such fertilizers and/or spray and the effect thereof on the trees at the time of or before such use, as it is to assume that they intended an inspection of the fruit itself at the time the same is being packed or prepared for sale and transportation.

In other words, to construe the act to mean that the Legislature only intended an inspection of the fruit at the time and place of its preparation for sale and transportation without any provision for an inspection of the fertilizer and spray used on the tree would be to render inoperative and unenforceable the provisions of Section 1 of the act as a preventive measure prohibiting the use of fertilizer and spray containing arsenic or any of its derivatives.

Any legislation which has for its purpose the conservation of the health, comfort, safety and welfare of society and by its terms is reasonably conducive thereto and not merely an arbitrary fiat, is a legitimate exercise of the police power of the State.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DAIRY INSPECTION ACT—COMMISSIONER OF AGRICULTURE
AUTHORIZED TO PROMULGATE RULES AND
REGULATIONS

August 20, 1931.

Dear Sir:

Replying to your favor of the 19th instant with which you enclose a letter from your Chief Milk Inspector, also a letter from the Secretary of the Florida State Dairy Association and a copy of the Dairy Inspection Act of the 1931 Legislature, which became a law on June 11th, 1931, and in which you ask to be advised whether or not it is my opinion that the Commissioner of Agriculture is authorized under the provisions of the act to make and promulgate rules and regulations for its enforcement, permit me to say that it is my opinion that Sections 21, 22 and 23 of the act provide sufficient authority for the Commissioner of Agriculture to make, promulgate and enforce rules for its enforcement.

Trusting you will find this to be satisfactory and with best wishes, I am

Yours very truly,

CARY D. LANDIS,
Attorney General.

FERTILIZER SHIPMENTS—WHEN SAMPLES MAY BE DRAWN
“WHEN INTERSTATE CHARACTER LOST AND AT WHAT
TIME AND POINT STATE OFFICERS MAY EXERCISE
AUTHORITY.”

October 28, 1931.

Dear Sir:

Replying to your favor of the 19th instant, in which you ask my opinion on three specific questions, permit me to say:

In replying to your first question in which you ask at what point does an interstate shipment lose its interstate character, and in which you ask to be advised at what time and point State officers may exercise their authority over shipments consigned to parties in this State from out of state shippers, and in which you ask the specific question: “Could an inspector of the Department of Agriculture enter a railroad car at the point of

destination before the seal of the car was broken and draw samples of fertilizer prior to the unloading of same?" permit me to say it is my opinion that a State officer would have no authority to inspect or draw samples of fertilizer until the same had been delivered to the consignee, or until the same was offered for sale.

Replying to your second question in which you ask to be advised whether or not the prepayment of interstate shipments affects its interstate character, permit me to say that it is my opinion that the prepayment of freight would have no bearing whatever on the interstate character of a commodity.

Replying to your third question in which you ask if a citizen of Florida purchases fertilizer in Alabama, delivers same to self in Florida by truck without delivering same to a common carrier, use the same on his farm in Florida without having Florida's inspection stamp on the goods, he might bring suit for a deficiency that might be found in said fertilizer, and, if so, would his protection be under the Alabama fertilizer law, or under the Florida fertilizer law, permit me to say in reply to this question that it is my opinion that a person under the circumstances as stated would necessarily bring his action in the State of Alabama, as the transaction would be one between the vendor and purchaser and not one in which the State of Florida would be interested.

Trusting you will find this to be satisfactory, I beg to be, with best wishes,

Yours very truly,

CARY D. LANDIS,
Attorney General.

BUTTERMILK—NOT NECESSARY TO SHOW ON LABEL STATE
WHERE PRODUCED

November 3, 1931.

Dear Sir:

This refers to your favor of October 29th, requesting my opinion as to whether or not Chapter 14762, Laws of Florida, Acts of 1931, requires buttermilk to be labeled so as to show the State in which the same is produced.

I would state that I have carefully considered the Act, and the sections applicable to this question are 1, 3 and 24. Section 1 contains a definition of milk and buttermilk is not included in this definition. Section 1 also includes a definition of milk products, and buttermilk, among other things, is included. Section 3 specifically requires labeling so as to indicate the State in which the same was produced, with reference to milk and cream. This, in my opinion, does not include buttermilk, in accordance with the definition of the Act, and inasmuch as the specific terms milk and cream are used, the rule of construction would be that it would exclude the other type of products mentioned in the Act. Section 24 of the Act, in my opinion, would not overcome the specific language of Section 3.

Thus it is I am clearly of the opinion that it is not necessary to label buttermilk, so as to show the State in which it is produced.

I herewith return you the enclosures handed me with your favor of October 29th.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MILK—CONSTRUCTION OF LAW IN RE DUTIES OF COMMISSIONER OF AGRICULTURE

March 9, 1932.

Dear Sir:

Replying to your favor of the 17th instant, I beg to advise that it is my opinion that Chapter 14762, Laws of Florida, Acts of 1931, duly authorize the Commissioner of Agriculture and—or his authorized inspectors to enter peaceably upon the premises of any milk plant, creamery, dairy, milk house, delivery truck or wagon for the purpose of obtaining a sample of milk or cream produced for sale and consumption thereat, and for the purpose of inspecting any of such premises with the view of determining the cleanliness of the premises or plant and the purity of the milk or cream as contemplated by said Act. It is my opinion that you have a right to take a reasonable sample of the milk or cream produced for the purpose of taking it to your chemical laboratory or some proper place to make such inspection as is provided by the Commissioner of Agriculture under the Act.

Section 21 of said Act authorizes and requires the Commissioner of Agriculture, from time to time, as he may deem expedient and necessary to make and promulgate rules and regulations for carrying out and enforcing the provisions and requirements of said Act to the end that the people of Florida, in the use and consumption of milk, cream and other dairy products produced at such plants may be secure in the assurance that milk and milk products, sold or offered for sale to the public, are produced under sanitary conditions and are wholesome and fit for human consumption, and are being offered to the public under their correct designation as to grade and quality and as to source of production. (Section 24). Such rules and regulations may go to the extent only of requiring the handling of such milk and milk products in such way and manner as to insure its cleanliness and purity, and that the same is sanitary, wholesome and fit for human consumption.

There is nothing in said Act which authorizes the Commissioner of Agriculture to make and promulgate rules and regulations as to detailed construction of barns, milk rooms, utensils and other equipment on dairy farms where milk or milk products are produced, or as to the methods practiced in the production of milk or milk products produced on dairy farms in the State, yet, the Commissioner of Agriculture is interested and has the authority through himself and his duly authorized inspectors to determine whether milk sold or offered for sale for consumption by the public has

been produced and handled under such conditions as to insure its purity, cleanliness and wholesomeness, and to this extent in the first instance the Commissioner of Agriculture and his duly authorized inspectors may require the use of such barns, milk rooms, utensils and other equipment as will result in the production of pure, clean and wholesome milk that is fit for consumption. In other words, the Commissioner of Agriculture and his duly authorized inspectors, in my opinion, under the law have the right to prevent the use of barns, milk rooms or any equipment which in its very nature would produce unsanitary, unclean or unwholesome milk. If by inspection of the milk plant, creamery, dairy, milk house, delivery trucks, wagons or otherwise in the handling of milk or milk products the same is found not to be in conformity with the requirements of said Act, or the rules and regulations promulgated by the Commissioner of Agriculture, whether by means of the houses or buildings in which the same is produced and handled or by the equipment used, or lack of equipment, or in the handling thereof or otherwise, said milk and milk products shall thereupon be deemed subject to destruction by the Commissioner of Agriculture or his authorized inspectors, and in addition thereto the person or persons, firm or corporation so producing the same shall be subject to punishment as in Section 23 in said Act provided.

The Commissioner of Agriculture may himself or through the milk inspection division of his department make such suggestions and—or recommendations as to buildings, equipment and other facilities for the production and handling of milk and milk products as shall secure to the people of the State the assurance that the milk or milk products sold or offered for sale to the public are produced under sanitary conditions and are wholesome and fit for human consumption.

You ask the question whether or not it is lawful to sell reconstructed, cultured buttermilk, and in reply I would state that after a careful reading of the Act, I am of the opinion, that if one produced reconstructed, cultured buttermilk and the product conformed to the other requirements of the Act, and the product is so labeled as reconstructed, cultured buttermilk, that the producer would have a right to place the same on the market. It is my opinion, of course, that such reconstructed, cultured buttermilk would have to contain not less than 8-5/10% of milk solids, not fat, and thereby conform to the other rules and regulations promulgated by the Commissioner of Agriculture as to cleanliness, purity and wholesomeness.

Very respectfully yours,

CARY D. LANDIS,

Attorney General.

GASOLINE—EXEMPTION OF INSPECTION FEE OF ONE-EIGHTH CENT NOT AUTHORIZED

March 18, 1932.

Dear Mr. Mayo:

I am in receipt of your letter of March 14, with reference to exemptions from the inspection fee of one-eighth cent per gallon on gasoline and like products provided for in Section 3965, Compiled General Laws of 1927. You

state that one party claims exemption on the ground of evaporation of gasoline in storage, and, also, on the ground that the gasoline is used at sea, presumably beyond the territorial limits of the United States.

I beg to call your attention to Section 3956, Compiled General Laws of 1927, which provides for inspection of all gasoline and like products used for illuminating, heating, cooking or power purposes *sold, offered or exposed for sale in this State*.

Your attention is also called to Section 17 of Chapter 15659, one of the gasoline statutes of 1931, which section specifically provides that nothing in the Act shall be construed as repealing any part of Chapter 7905, Acts of 1919, known as the gasoline inspection act.

I also call your attention to Section 4 of Chapter 15788, another gasoline statute of 1931, which section provides that the gasoline inspection laws of the State shall be applicable to the enforcement of that Act.

In conclusion, I beg to say that I do not find any exemptions from the gasoline inspection tax of one-eighth cent per gallon applying to the conditions above named, on which exemption is sought.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

LICENSE TAX—PRODUCERS OF FARM AND GROVE PRODUCTS
EXEMPT

May 17, 1932.

Dear Mr. Mayo:

Replying to your favor of the 13th instant, with which you enclose a letter from Hon. Neill Rhodes, Assistant Commissioner for the Marketing Bureau, permit me to say the statute exempts producers of farm and grove products from the payment of State, county, and municipal license, where the producer by himself, offers for sale products grown on his own farm or grove. And municipalities have no legal authority to enforce the payment of a license against said producers.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BUTTERMILK—TAG MUST SHOW SPECIFIC CLASS

June 24, 1932.

Dear Mr. Scott:

I am returning you herewith the tag which has the words on it: "Cultured buttermilk, churned, pasteurized."

It is my opinion that this tag does not comply with the State law. Section 3 of the milk and milk products law, in my opinion, covers two classes

of buttermilk. One is churned buttermilk, which is the old-fashioned buttermilk, and which is defined in Section 1 of the Act under the term Buttermilk. The second is cultured buttermilk, which is defined under Section 1 of the Act under the heading Cultured Buttermilk. It seems to me that all buttermilk must come within one or the other of these two classes. If it is the old-fashioned churned buttermilk, the tag must have on: "Churned Buttermilk," and if it is the cultured buttermilk, it must then have the words: "Cultured Buttermilk." The tag which you sent me and which has both the words "Cultured" and "Churned Buttermilk" is, in my opinion, misleading, does not comply with the law, and the purchaser could not determine from the tag whether he is getting the old-fashioned churned buttermilk, or whether he is getting the cultured buttermilk. The purpose of the law was to protect the purchaser, and it seems to me that all buttermilk must be sold under one or the other of such labels.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

FEED STUFFS—CERTAIN RULES AND REGULATIONS NOT ENFORCEABLE

July 1, 1932.

Dear Sir:

Replying to your favor of the 30th ultimo, permit me to say I do not find that the statutes authorizing the Commissioner of Agriculture to promulgate rules and regulations governing the sale of commercial feed stuffs, would authorize him to make and enforce a rule which would prohibit a manufacturer of feed stuffs from using the same brand or trademark used by another manufacturer.

The laws pertaining to and governing the use of trade-brands, trademarks, and trade-labels, are not enforceable by the Department of Agriculture, nor do the laws governing the subject authorize the Commissioner of Agriculture to control the use of trade-marks as between manufacturers, by the adoption and promulgation of rules and regulations.

Yours very truly,

CARY D. LANDIS,
Attorney General.

AGRICULTURAL ENUMERATORS—EXPENSES OF PRINTING BLANKS AND SALARY PAYABLE FROM CERTAIN FUNDS

July 13, 1932.

Dear Mr. Mayo:

I have your letter of the 12th instant making inquiry as to the Fund from which expenses of printing blanks to be furnished agricultural enumerators under Sections 3936 to 3938, Compiled General Laws of 1927, should be paid.

In reply I beg to say that in my opinion this expense, as well as the pay of enumerators, should be paid under Section 3938 from the fund arising from the sale of fertilizer stamps by the Commissioner of Agriculture.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MILK OR CREAM—LICENSE TAX REQUIRED OF DEALERS

September 28, 1932.

Dear Mr. Scott:

Yours of the 24th instant, addressed to the Honorable Phil S. Taylor, Supervising Inspector Department of Agriculture, has been referred to this office for reply.

You ask to be advised whether, in the event the Pinellas County Dairyman's Co-operative Association procures a license as a dealer in milk and cream in the name of the Association, it would then be necessary for each member of the Association who buys milk or cream from the Association for re-sale to their customers, to also have a license.

Permit me to say it is my opinion that each member of the Association, buying milk from the Association for re-sale to their customers, should be required to have a separate license.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MILK—INSPECTORS NOT AUTHORIZED TO INTERRUPT TRANSPORTATION, BUT AUTHORIZED TO PROHIBIT SALE IN CERTAIN CASES

October 20, 1932.

Dear Sir:

Replying to your verbal request for an opinion regarding the authority of Government Inspectors to seize and destroy milk when the same is in course of transportation, permit me to say it is my opinion that the Inspectors have no such authority.

I think where milk is being transported from one point in the State to another for delivery to a dealer or for sale, that the Inspectors would be authorized to prohibit the same from being offered for sale until upon examination by the proper officers it is found to meet the requirements prescribed by Chapter 14762, Laws of Florida, Acts of 1931.

The law is not designed to regulate the transportation of milk but is intended to prohibit the possession for sale and the sale of milk not meeting the requirements of the Chapter above cited.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

SUPERINTENDENT OF PUBLIC INSTRUCTION

HON. W. S. CAWTHON

GENERAL SCHOOL FUND—CONSTRUCTION OF CONSTITUTION
IN RE COMMISSIONS FOR ASSESSING AND COLLECTING
THE TEN MILL LEVY PROVIDED FOR

June 26, 1931.

Dear Mr. Cawthon:

This is in response to your request for my opinion as to whether or not "it is proper to pay from the General School Fund commissions to the tax assessor and to the tax collector for collecting and assessing the ten mill levy for the General School Fund."

The Constitution, Article XII, Section 6, provides that "Each county shall be required to assess and collect annually for the support of the public free schools therein, a tax of not less than three (3) mills, nor more than ten (10) mills on the dollar on all taxable property in the same."

I take it that this is the tax that you refer to. This, in my opinion, is a county tax and, being a county tax, the tax assessor and tax collector are allowed their commissions upon the same and such commissions for assessing and collecting such tax is required by law to be audited and allowed by the County Commissioners and paid out of the General Fund of the county. Such commissions are not payable out of the General School Fund.

Trusting that this gives you the desired information, I am,

Respectfully yours,

CARY D. LANDIS,
Attorney General.

SCHOOL BOARD—MUST USE OWN DISCRETION IN SELECTING
DRIVER FOR SCHOOL BUS

August 20, 1931.

Dear Mr. Cawthon:

Replying to your favor of the 18th instant in which you ask whether or not it is my opinion that it is legal or desirable for a County School Board to contract with a trustee of a Special Tax School District as driver of a school bus for the district of which he is a member of the Board of Trustees, permit me to say:

We do not find that there is a statute which could be construed to expressly prohibit a contract of this nature; however, Section 578, Compiled General Laws, provides that no Board of Public Instruction will have power to enter into contract with any of its members except for the purpose of obtaining a school site.

Of course, a trustee of a Special Tax School District is not a member of the Board of Public Instruction, therefore the provisions of Section 578 do not extend to trustees, and the question of whether or not it is desirable for a County School Board to contract with a trustee as driver of a school bus for the district of which he is a member is, in my opinion, one which should be determined by the members of the School Board.

Trusting you will find this to be satisfactory, and with best wishes, I am,

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY PUBLIC SCHOOL FUNDS—EXPENDITURE AUTHORIZED FOR VOCATIONAL PURPOSES

November 10, 1931.

Dear Mr. Andrews:

I am in receipt of your letter of the 6th instant, with reference to the expenditures of County Public School Funds for vocational purposes. Your letter contains the following:

"Owing to the fact that our State appropriation for vocational rehabilitation of handicapped persons is not large enough to match the total available Federal funds for this purpose some of the counties in Florida have been asked to supplement the amount of money spent by the State within their borders.

"Some of the counties are willing to do this, but in Duval county the question of the legality of the expenditure of funds in co-operation with the State Board for Vocational Education has arisen. Mr. Roswell King, attorney for the County Board of Commissioners, has suggested that I get an opinion from you.

"Heretofore, the rehabilitation service has been carried on entirely by the State Board of Vocational Education with the co-operation of various county agencies, none of which have helped to finance the program. In order to meet the requirements of the Federal Board for Vocational Education the money must be spent under the supervision and control of the State Board for Vocational Education. However, the Federal board has agreed to recognize money spent by counties as legitimate State expenditures provided it was spent under the supervision of the State Board. One county prefers to send a certain sum to the State Board to be matched by Federal funds and expended within the county. Other proposals are that the county pay for expenditures for rehabilitation and that the State Board for Vocational Education reimburse them for half the amount.

"Still another proposal is that the State Board pay for all the bills contracted for rehabilitation within the counties and the county

to reimburse the State Board for half the amount. I have stated these three propositions separately and am attaching them to this letter.

"I should like to have your opinion regarding the legality of each of them."

In answer to your inquiry as to whether County Public School Funds may be used for the above purposes, I refer you to Section 846, Compiled General Laws of Florida, 1927, which reads as follows:

"The Board of Public Instruction of any county, or the Board of Trustees of any educational institution, maintaining a department of less than college grade under public control, may establish and maintain vocational schools, departments, or classes, giving instruction of less than college grade in agriculture, trades and industries, or in home economics, and any such Board of Public Instruction or Board of Trustees may use any moneys raised by public taxation in the same manner as moneys for other school purposes are used for the maintenance and support of public schools or classes of less than college grade."

The above quoted statute gives authority for the expenditure of County Public School Funds for vocational school but you will note that the statute contains the limitation that the instruction shall be less than college grade.

You make further inquiry as follows:

1. Whether the county should forward their appropriation to the State Board to be matched by Federal funds and expended within the county, or
2. Whether the county should make entire expenditure for rehabilitation and the State Board for Vocational Education reimburse them for half the amount, or
3. Whether the State Board should pay all the bills contracted for rehabilitation within the county and the county then to reimburse the State Board for half the amount.

Proposition 1 above would appear to be the proper procedure.

Proposition 2 would also appear to be a proper procedure provided there is a definite understanding as to the amount to be expended by the State.

Proposition 3 should not be undertaken without approval and authority of the State Board of Vocational Education after the determination of the ability of the county to make such reimbursements promptly, monthly or as the Board may determine.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TEXT BOOK CONTRACTS—BIDDERS NOT REQUIRED TO QUALIFY UNDER LAW

November 21, 1931.

Dear Mr. Cawthon:

Replying to your favor of the 18th instant, permit me to say we know of no statute which requires a person, firm or corporation to qualify under the laws of this State to do business in Florida as a pre-requisite to bidding on text book contracts.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SCHOOL BOARD—CONSTRUCTION OF LAW IN RE REDUCTION TEACHERS' SALARIES

January 1, 1932.

Dear Mr. Cawthon:

Replying to your favor of the 23rd instant, requesting my opinion as to whether or not it would be contrary to the provisions of Sections 4 and 6 of Chapter 14829 for a county school board to reduce salaries of teachers after filing in the office of the State Superintendent the statement required by Section 6 of the Act, permit me to say:

Inasmuch as the statement filed in the office of the State Superintendent is one showing the salaries to be paid teachers, and forms a basis of apportionment of funds derived under the provisions of the Chapter above cited, it would be contrary to the spirit of the statute for a school board to reduce the salaries of teachers after the statement has been filed and the apportionment based thereon.

With reference to your question as to whether or not a school board is authorized to use any of the funds derived under the provisions of the Chapter above cited for the current year to pay the salaries of teachers for services rendered during previous years, permit me to say it is my opinion that the use of such funds would be contrary to the spirit of the Act and the evident intent of the Legislature.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BOARD OF PUBLIC INSTRUCTION—WHEN MOTOR VEHICLES EXEMPT FROM LICENSE TAX

January 25, 1932.

Dear Mr. Cawthon:

Replying to your favor of the 21st instant, with which you enclose a letter from Hon. C. G. Oldfather, Superintendent of Public Instruction of St. Johns County, requesting an opinion regarding the use of motor vehicles

owned and operated by the Board of Public Instruction of a county, permit me to say:

I have heretofore held and now hold that a motor vehicle owned by the Board of Public Instruction or by the county, to be permitted to operate with an X or exempt tag, must be used exclusively for governmental purposes; and in the case of motor vehicles owned by the school board, such motor vehicles, in order to come within the exemption, must be used exclusively for the purpose of transporting pupils to and from public school.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY SCHOOL FUNDS—COUNTY BOARD PUBLIC INSTRUCTION RESPONSIBLE FOR EXPENDITURES

May 23, 1932.

My Dear Doctor Cawthon:

The law vests absolute power in the County Board of Public Instruction to control expenditure of county school funds.

When special tax school districts approve, in annual budget, amounts for district expenditures, sole power for making expenditures is vested in the school board. County Superintendent of Public Instruction has no legal authority to prevent expenditures by board, provided same do not exceed anticipated income and cover educational equipment materials and operation.

County Superintendent of Public Instruction is not responsible in any degree for expenditures ordered by the board. The law makes the school board responsible for all expenditures made pursuant to contract. County Superintendent cannot expend school funds except upon order of board.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

6

XVI.

OPINIONS—SEMI-OFFICIAL

STATE OFFICERS

The following are a few of the opinions rendered by this office to the various State Officers, Boards and Commissioners, which may be of interest to the public generally:

ADJUTANT GENERAL

AUTOMOBILE LICENSE TAG—WHEN OFFICERS AND ENLISTED
MEN IN UNITED STATES ARMY OR NAVY ARE EXEMPT

July 29th, 1931.

Dear Sir:

Replying to your favor of the 23rd instant, relative to whether or not officers and enlisted men of the United States who live in the State of Florida have been exempted from the automobile license tag fee, permit me to say that paragraph 15 of the Act of the Legislature, approved June 26th, 1931, copy of which we are enclosing herewith, reads as follows:

"Vehicles owned and operated by the Federal Government or by officers or enlisted men actually serving in Florida in the United States Army or Navy, by performing duties for the Federal Government in Florida under orders of the Military or Naval authorities shall, when properly identified with tags or plates issued by the proper department of the Federal Government or by the commanding officers of the Army or Navy having jurisdiction in the premises be exempted from registration under this act."

Trusting you will find this to be satisfactory and with best wishes,
I am

Yours very truly,

CARY D. LANDIS,
Attorney General.

NATIONAL GUARD—APPLICATION OF LAW IN RE GOVERNOR'S
POWER TO TRANSFER OR REMOVE OFFICERS

November 30, 1932.

Dear Sir:

This refers to your favor of the 23rd instant in which you request my opinion on the following matter:

(a) Regarding the constitutionality of Section 1, Chapter 14761, General Laws of Florida, 1931, with reference to the Governor's power of transfer or removal of officers of the National Guard.

(b) The Governor's power to remove, transfer or otherwise eliminate an officer of the National Guard without statutory cause, or his power to revoke a commission under the provisions of Section 16, Article IV, of the Constitution.

It is my opinion that Section 1 of Chapter 14761 does not violate the provisions of Section 16, Article IV, of the Constitution, but that the same is in accord with said constitutional provisions, and especially that part of Section 16, Article IV, of the Constitution, which reads as follows:

"Subject to such laws as may be enacted by the Legislature providing for their retirement for age or other causes."

If Section 1, Chapter 14761 had never been enacted, then the Governor, if he saw fit could permit such officers to remain in office regardless of age limitation or regardless of removal by court martial, but Section 1 of Chapter 14761 provides an age limit for the holding of such appointments, and provides for the relief for cause by court martial, therefore, it is my opinion, the Governor may in the light of the constitutional provision and Chapter 14761 remove officers at his pleasure, and he may keep and maintain them in office at his pleasure subject to the age limitation and the power of relieving the official by court martial or efficiency board.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CENTURY OF PROGRESS COMMISSION

HON. W. C. HODGES, CHAIRMAN

RACING ACT—MONEY RECEIVED BY COUNTIES MAY BE USED TO CREATE ADVERTISING FUND

March 31, 1932.

Dear Sir:

Under the State Racing Act, to-wit: Chapter 14832, Laws of Florida, Acts of 1931, each of the counties receives certain moneys out of the proceeds of the races held throughout the State. Section 13 of this Act authorizes the county commissioners to use this race money and place it in any lawful fund for the county.

It is my opinion that in all counties where they are lawfully authorized to create an advertising fund, the racing moneys received by the county may be placed in such a fund. The requirements of the budget law apply to all funds of the county, and it will be necessary for the counties in their budget to provide for the application of such advertising funds to the Century of Progress Commission work, or whatever other advertising they may wish to do.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CENTURY OF PROGRESS EXPOSITION—CERTAIN FUNDS AND
EXHIBITS AUTHORIZED TO BE USED

July 5, 1932.

Dear Sir:

The attached copy of Resolution and made a part hereof, has been considered by me in the light of the statutes of the State of Florida.

Section 6526 of the Compiled General Laws of Florida authorizes the County Commissioners of the various counties of the State of Florida to expend in their discretion such sums of money as they deem for the best interest of their counties in aiding the demonstration of agricultural, horticultural and livestock resources of their counties and in giving publicity to the advantages of agricultural, horticultural and livestock possibilities of their counties by providing for, aiding and assisting the exhibition and demonstration of such resources at and in connection with such fairs and expositions as are held in the State in accordance with the laws authorizing such fairs and expositions, including the offering and paying of premiums for such expositions of resources of their respective counties. Under this authorization the Board of County Commissioners may lawfully act and adopt the resolution, a copy of which herewith, if such Board of County Commissioners feel that it is for the best interest of their counties to further the purposes of the county as set forth in Section 6526 of the Compiled General Laws of Florida.

I can see no objection to the use of such exhibits as may be gathered together with such funds at the Century of Progress Exposition so long as the same does not interfere with the purposes of the exhibit within the State of Florida. The law clearly authorizes reasonable appropriations for designated uses in the State, and certainly the incidental use in line with the same purpose outside of the State, would not be a violation of the law, so long as it in no wise interferes with the stated purpose within the State for which said money may be properly appropriated.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

RESOLUTION

Whereas: An opportunity is offered.....County to exploit and advance the agricultural, horticultural, livestock, industrial and commercial interests of said county, through participation in the expense of exhibits, dioramas and other display materials to be used throughout Florida at important fairs and expositions in conjunction with other counties of this State, and

Whereas: The Florida Legislature, session of 1931, did enact a law providing for the creation of a Florida Commission with the Governor as ex-officio chairman of same and authorizing this commission to provide the representation of this State at "A Century of Progress" Exposition in Chicago during 1933, and

Whereas: The above legislatively created commission agrees to assemble, classify and display these exhibits throughout Florida, acting as the agents of this county and to be compensated for so doing at a cost to this county of not more than the sum total of 7½c per capita of population as given for this county in the Federal census of 1930 and with the proviso that the Florida Commission be permitted to use all or such part of these exhibits as they deem proper in connection with the Florida Exhibit at "A Century of Progress" Exposition,

Therefore, Be It Resolved: That we, as and constituting the "Board of County Commissioners" of said county, do hereby advise the Florida Commission, through its ex-officio treasurer, Honorable Nathan Mayo, Commissioner of Agriculture, that we will include an agricultural item or fund in our budget of estimates for 1932-33 in such amount as we deem necessary to fittingly present the agriculture, horticulture, livestock, industrial and commercial advantages of this county in the manner mentioned in the preamble to this resolution; and that we propose to pay out of such fund as included in said budget the sum of \$..... to Honorable Nathan Mayo as Treasurer of the Florida Commission, and,

Be It Further Resolved That after the adoption of the county budget for the fiscal year, 1932-33, having received after July 1st, from the State Treasurer our quota of funds from racing commission receipts as provided in Chapter 14832, Acts of 1931, we propose to assign a sufficient amount from said county's quota of racing commission receipts into the item or fund for agriculture as set in our budget and thus be enabled to provide the Florida Commission with the amount pledged by this resolution and to remit same within 15 days after the adoption of the aforementioned county budget.

Of and as constituting the Board of
County Commisisoners of.....
County, Florida

Attest:

Clerk of the Circuit Court.

CIRCUIT COURT JUDGES
COURT REPORTER—MILEAGE ALLOWED

October 12, 1931.

Dear Judge:

Mr. Whitfield, Clerk of the Supreme Court, has handed me your recent letter requesting advice as to the proper mileage to be allowed the Circuit Court reporter, and in reply I beg to advise that under the provisions of Section 4875 of the Compiled General Laws of Florida, the Circuit Court

reporters are authorized to charge for and receive their fair and reasonable traveling expenses when such expenses have been incurred in traveling to and from court out of the county of the residence of such court reporter, and the amount thereof has been certified to by the presiding judge of such circuit.

Under the provisions of the general appropriation bill as passed by the last Legislature, such traveling expenses shall not exceed \$100.00 per county annually.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DISABLED WAR VETERANS—CONSTRUCTION OF CONSTITUTION IN RE TAX EXEMPTIONS

February 12, 1932.

Dear Judge:

In reply to your letter of the 9th instant, I beg to state my view as to the proper construction to be placed on Section 9 of Article IX of the Constitution of Florida, with reference to the right of disabled war veterans to tax exemption, particularly as applicable to the questions raised by the alternative writ of mandamus issued in the case of State of Florida ex rel J. S. Rainey vs. Oscar Nolan as Tax Assessor of Duval County.

In order to entitle a claimant to exemption under this provision of the Constitution, he must be a bona fide resident of the State of Florida, and must have been disabled in war, and must have actually owned the property on which the exemption is claimed on the first day of January of the year for which such exemption is claimed.

If these facts obtain in any given case, the veteran is entitled to an exemption to the value of \$500. If he has a government rated disability to the extent of 29%, this is sufficient, in my opinion, as a basis for the exemption.

As to the method of applying the exemption, it is my opinion that the \$500 should be deducted from the full cash value of the property and the balance assessed on such percentage basis as is applied to other property assessments.

Since, under the law, property is assessable and the tax lien attaches as of January 1st, I do not think one could claim the exemption provided for in Section 9 of Article IX for any given year, where the property is acquired after January 1st.

I believe this covers all the questions raised by the alternative writ of mandamus in the above cause, and I do not feel that it is necessary for me to appear and represent the State in this case.

Yours very truly,

CARY D. LANDIS,
Attorney General.

APPROPRIATION BILL—CONSTRUCTION IN RE SALARIES OF OFFICIALS

August 31, 1931.

My dear Judge:

This is in reply to your favor of August 26, 1931.

A clause in the late salary bill, enacted at the 1931 session of the Legislature, provided that where officers were paid for the month of July, 1931, under the Emergency Bill, that the sum paid for the month of July, when added to the other eleven payments during the year, should, in the sum total, equal the reduced amount of the salary. The Circuit Court Judges, Supreme Court Judges and other officials of the State that were being paid under a general or special law pertaining to their special office and carrying an appropriation accordingly, were, in fact, paid the July salary under such law of the continuing appropriation; and, it is my opinion that having been so paid, the emergency appropriation, not having applied to the July payment, therefore the general clause limiting the salary to the reduced annual amount does not apply to such officials. Thus it is that all such officials that were paid or should have been paid under the continuing appropriation, under a general or special law, will be entitled to their full salary under the continuing law for July, and the eleven payments for the remaining part of the fiscal year, shall each be for one-eleventh part of the reduced salary as set forth in the salary bill.

This construction has been given to the Comptroller, and if you have not received your salary in full under the general or special law for July, it will be done, and the remaining eleven months shall be paid to you on the reduced salary scale.

I take it that this answers your inquiry and meets with your approval.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BONDS—CONSTRUCTION SENATE BILL NO. 852

October 20, 1931.

This refers to your favor of October 8th.

After careful consideration the State Comptroller's office, along with this office, have construed Senate Bill No. 852 as follows:

First. All district bonds such as your port district may be accepted for unpaid taxes for that district.

Second. All county wide bonds may be accepted for the payment of State and county taxes.

Third. Bonds, whether they have matured or not, and matured interest coupons may be accepted.

Trusting that this covers the inquiry which you make, I beg to be

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

INSURANCE LAWS—VIOLATION BY VARIOUS COMPANIES

October 31, 1931.

My Dear Judge:

Permit me to thank you for your favor of October 28th, sending me a copy of charter of the Mutual Reserve Benevolent Corporation, together with copy of proposed membership certificate and amendment charter.

It is my opinion that these concerns are endeavoring to do an insurance business under the guise of a charter granted under the Non-Profit-Sharing Corporation Act. There are a great number of these companies operating in the State. There has been much pressure brought to this office to institute quo warranto proceeding with a view to ousting them from their operations, which are claimed to be in violation of the insurance laws of the State of Florida. One such concern which was, in my opinion, doing a fire insurance business has been ousted by a writ of ouster issued by the Circuit Court of Duval County. The suit was instituted by this office, and now that case is pending in the Supreme Court. The State Attorney of St. Lucie County, under my direction, has recently instituted a proceeding against another such concern.

We are preparing to institute proceeding against these various concerns, and will do so as we can find time to do it. There is no doubt in my mind that most of them, if not all, are violating our insurance laws.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

WITNESS FEES—WHEN PERSON HELD IN CUSTODY
ENTITLED TO

December 22, 1931.

Dear Judge:

Replying to your favor of the 18th instant relative to the payment of witness fees to a person held in custody as a material witness for more than a month, permit me to say:

My predecessor in office, Hon. Fred H. Davis, rendered several opinions relative to witness' fees. In one opinion, which may be found on pages 190-191 of the Attorney General's Report for 1927-28, Judge Davis expressed the view that the Court has the power to order the payment of witness' fees, and that the Court has the power to enforce such order. However, the statute appears to contemplate the payment of a per diem to witnesses for each day's actual attendance on Court.

Section 4379, Compiled General Laws 1927, reads as follows:

"Witnesses in all cases civil and criminal in the Circuit Courts, county courts, criminal courts of record, now or hereafter created, and witnesses summoned before any referee, arbitrator, or master

in chancery, shall receive for each day's actual attendance, \$2.00, and also 5c per mile for actual distance traveled to and from the courts; in courts of county judges and justices of the peace, \$1.00 per day and the same mileage as in the Circuit Court."

In view of the language of the statute above quoted, it seems to me that the question of whether or not a person held in custody as a material witness is entitled to a per diem for each day held, depends upon whether or not the restraint of the person's liberty by the State could be construed to mean that such person during the period held in custody was in actual attendance upon Court. Inasmuch as the court has the power to order a material witness held or released, it seems to me that a person held in custody by order of the Court as a material witness should be considered as in attendance upon the Court as a witness, and should be paid the per diem for the number of days held.

We are sending you under separate cover copies of the Attorney General's Reports for 1927-28 and for 29-30, and we hope that you may find them to be useful to you.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—WHEN REQUIRED ON STOCK TRANSFERS

August 20, 1932.

My Dear Judge:

I have your letter of the 18th instant enclosing copy of a letter to you from John S. Sinclair of Philadelphia under date of July 25 with reference to documentary stamps required under Chapter 15787 of 1931.

In reply, I beg to say that the transfer of stock in a corporation from one trustee to another trustee which takes place outside of the State of Florida would not in my opinion require documentary stamps to be affixed under the provisions of said chapter unless a memoranda of such transfer is made or delivered in Florida or unless the transfer has to be entered on the books of the corporation in Florida because of its being a Florida corporation, in which event the necessary stamps should be attached to the memoranda or transfer.

The tax provided by the statute for transfer of stock in corporations is ten cents on each one hundred dollars of face value or fraction thereof.

Very truly yours,

CARY D. LANDIS,
Attorney General.

CIVIL COURTS OF RECORD, JUDGES

LIQUIDATOR—SUITS SHOULD BE BROUGHT IN HIS NAME

October 20, 1931.

My Dear Judge:

This refers to your favor of the 20th instant, in which you make reference to Chapter 13576, Acts of 1929, which is an amendment of Section 6102 of the Compiled General Laws; and you raise the question as to whether or not suits should be brought in the name of the Liquidator or the Comptroller's name. I do not know that this question has ever been raised in the courts, but casually it has been discussed in the offices, and we have reached the conclusion that the Act requires the suit to be brought in the name of the liquidator. This has been the practice throughout the State so far as I know.

I really think it is more or less immaterial, but, after consideration here in the offices, we have decided that the statute contemplates the bringing of the suit in the name of the liquidator—that is, the liquidator takes the place of and in the stead of the bank.

With my kindest personal regards, I beg to be

Respectfully yours,

CARY D. LANDIS,
Attorney General.

INDUSTRIAL SCHOOL FOR BOYS—WHO CLOTHED WITH RIGHT
TO REFUSE BOYS WHEN COMMITTED BY COURT

March 26, 1932.

Dear Judge:

This refers to your favor of the 21st instant, with which you enclose to me a copy of your letter of the same date to Hon. Millard Davidson, Superintendent of the Florida Industrial School for Boys.

The question which you raise is as to whether or not the Board of Commissioners of State Institutions or Mr. Davidson, the superintendent, has the right to refuse to accept a boy who may be committed to the Florida Industrial School for Boys by you as Judge of the Criminal Court. I presume that the board and Mr. Davidson do not have the right to do this and that they probably have not the right to insist on an application being filed with the institution, but you are a man who realizes that there must be full and complete co-operation under existing conditions and circumstances. Of course, there is a clause in the law set forth in Section 8674 of the Compiled General Laws which might indicate that the Board of Commissioners might have the right on the ground of expediency not to receive a boy, even though committed by a judge of a court of competent jurisdiction.

The last Legislature in the General Appropriation Bill provided that the total amount to be expended by the Florida Industrial School for Boys annually should not exceed \$25.00 per month per capita on an average number of

inmates not over 460. With the conditions of the State as it is the board is confronted with this situation, that the appropriation as you see is exceedingly limited. We are running over that average in attendance at this time, even with the splendid co-operation we are receiving from all of the various courts. You will see that the allotment per month per inmate is very small, and the actual attendance for last month was 463. There is constantly pressure being brought to place boys in this school, in fact, there appears to be a large and long waiting list, and you can readily see how the State board is put to it to carry on.

It is with this in mind that the board seeks and asks the aid of all of the courts in a co-operative spirit in order that we may continue to carry on, and yet I realize as you state, that the courts have certain judicial functions, which we should not violate, and we do not intend to violate. We are also confronted continuously with non-resident boys who seem to be getting into this State for some purpose, I do not know what, and we are asked to take them in. I have taken the position that the boys that are tramping in our State from other states should be sent back to their home states if possible, and I felt that under present conditions that our home boys are entitled to first claim upon this institution, and that the counties in the spirit of co-operation, if it is necessary to do so, should transfer these non-resident boys back to their home states. I want to assure you there is no spirit of defying the jurisdiction of your Court, or any court in the State, and I know that such thought has not entered the mind of any member of the State board nor Mr. Davidson. If the particular case is one of which you feel the State should take charge at this time, I see nothing else for us to do but take the boy, but knowing that you are particularly interested in this line of work, whatever you can do at any time to aid us to carry on this exceptional burden with the exceedingly limited appropriation we have will be appreciated by me personally and by each member of the board as well as Mr. Davidson.

With assurance of respect and kindest personal regards, I beg to be

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SENTENCES—IN RE SUSPENSION

June 30, 1932.

Dear Judge:

Answering your letter of the 22nd instant with reference to the suspension of sentences, I beg to refer you to the cases cited in notes under Section 841, Compiled General Laws of 1927.

You will note that our Supreme Court holds that a trial court may suspend sentence, that is suspend passing sentence, but has no right to suspend the execution of a sentence already lawfully imposed.

The suspension of passing sentence reciting that the court retains jurisdiction from day to day and from term to term may in effect be revoked by calling in the party and passing sentence on him.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

FLORIDA STATE COLLEGE FOR WOMEN

COUNTY AND HOME DEMONSTRATION AGENTS—METHOD OF EMPLOYMENT

April 11, 1932.

Dear Madam:

At your request for an opinion on the subject of whether the question of employment of county agents and home demonstration agents by the several counties of the State can be submitted to the electorate of the respective counties to be voted on at the primary election, I beg to advise that there is no provision of law whereby this may be done.

If it should be undertaken to submit such question at the general primary election, there is a serious question as to whether or not this would jeopardize the legality of such primary. The primary election is provided by law for the nomination of State and county officers and members of the party executive committee, and for no other purpose.

Our county budget law requires that all items of expenditure contemplated by the Board of County Commissioners shall be included in the annual budget, the estimates of which must be made up and published prior to the beginning of each fiscal year and prior to the adoption of the budget, and in this way the taxpayers have an opportunity to express their approval or disapproval of any item in the contemplated budget prior to its adoption. In this way the county commissioners may get an expression of the taxpayers as to their desire in the matter of the employment of either the county agent or home demonstration agent for any given year. This, of course, applies alike to all of the several counties of the State.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PRIMARY ELECTION—STUDENTS FLORIDA STATE COLLEGE MUST REGISTER IN PERSON

April 13th, 1932.

Dear Madam:

This refers to your inquiry for an opinion as to whether or not the students of the Florida State College for Women who desire to vote in the primary election, but who have not registered, and who are unable to do so in many instances due to the distance from their home counties and their inability to return thereto, may be permitted to register by mail.

In reply I beg to advise that Section 375 of the Compiled General Laws which is part of the Primary Election Law, provides in part as follows:

"Every elector may be registered without charge by *personally appearing* in the office of said Supervisor of Registration, and after being duly sworn, stating the following facts, which the Supervisor of Registration shall appropriately enter in the General County Register * * * . Such person shall then next following the afore-administered oath sign his name in the presence of the Supervisor of Registration, in the General Register upon the same line where the preceding information is written."

In the light of the foregoing statute, it is my opinion, that it will be necessary for the students of the Florida State College for Women who desire to vote in the coming Primary Election to return to their home counties and register before the Supervisor of Registration, as outlined, in order to be eligible to vote.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

HARBOR MASTERS

HARBOR MASTER—DUTIES AND FEES

February 1, 1932.

Dear Sir:

Your letter of the 29th instant addressed to Governor Carlton has been referred to me for reply.

First, permit me to say that the telegram to you under date of January 28th, quoting the maximum fee which the Harbor Master may charge to be \$25, is in error, for the amount prescribed by the statute is \$20.

I gain the impression from your letter that you wish to appoint as deputies Harbor Master, three licensed pilots, and have them board incoming vessels at the harbor line, take charge of such vessels, berth and unberth them, and charge a fee of \$20 which shall include the Harbor Master's fee; and the question upon which you desire an opinion is whether or not your deputies would have the authority to board vessels at the harbor line.

Permit me to say Section 3911, Compiled General Laws of 1927, reads as follows:

"It shall be the duty of the Harbor Master, by himself or deputy, to board every vessel entering the port for which he is appointed after such vessel has been released by the Health authorities of the port, to demand of the Master the certificate of the vessel's release by such Health authorities, and to deliver the same within twenty-four hours to the Secretary of the Board of Health. But it shall

be unlawful for any such officer in boarding such vessel under this Article to solicit from such vessel any business either for himself or for anyone else, and any violation of this provision by any such officer shall subject him to removal from his said office by the Governor, if such violation be committed by the Harbor Master, and if committed by any deputy harbor master, then by the Harbor Master whose duty it shall be in such cases to remove promptly such deputy."

It appears from the Section above quoted that the law does not contemplate the Harbor Master or his deputy boarding a vessel prior to its release by the Health authorities of the port.

Section 3912, Compiled General Laws 1927, makes it the duty of the master of every vessel arriving in a port for which a harbor master shall be appointed to apply to such Harbor Master or one of his deputies for a station in the stream or a berth at the wharves, and requires the Harbor Master or his deputy to forthwith station such vessel in the stream or at the wharves.

Section 3913 makes it the duty of the Harbor Master to be present at all times, either in person or by deputy, to facilitate the loading or unloading of vessels by assigning to them berths at the wharves, and by requiring each to accommodate others needing more immediate accommodation.

Section 3914 prescribes the maximum fee which the Harbor Master shall receive from the master, owner or consignee of vessels coming into the port, for which he is appointed, for the services rendered by himself or deputy, a fee not to exceed the sum of \$20, according to the amount and value of the services rendered.

I assume that your deputies being licensed pilots would have authority to board a vessel at the harbor line, either before or after release by the Health authorities. On this particular point, I am not clear, but assume that you may ascertain what the practice is in this respect from the pilots themselves.

Assuming that pilots as a matter of practice do board vessels prior to release by the Health authorities, and assuming that your deputies as pilots boarded incoming vessels at the harbor line, and that the services rendered by the pilots to the vessel as deputy harbor masters, in boarding vessels at the harbor line, taking charge thereof and berthing and unberthing them, would be a service reasonably worth the maximum fee of \$20, I know of no legal objection to such procedure.

Of course, if this arrangement should result in a monopoly of pilotage by the Harbor Master, to the exclusion of pilots who had not been appointed deputy harbor masters, there would probably be considerable objection from the pilots excluded by the arrangement. However, this is a matter, no doubt, which can be satisfactorily arranged between yourself and the Pilot Commissioners.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PILOTS AND HARBOR MASTERS—DUTIES AND FEES

March 2, 1932.

Dear Sir:

This refers to your request for an opinion of the Attorney General relative to the duties of Pilots and Harbor Masters and the fees to be charged by them. Section 3879 of the Compiled General Laws of Florida is as follows:

"Pilot bringing vessel in entitled to take her out. Any licensed pilot who shall take or bring a steamer or vessel into port, shall be entitled to take her out, and any other pilot taking such steamer or vessel shall forfeit the full amount of pilotage to the pilot rejected; and the master of said steamer or vessel, or owner or owners thereof, shall be bound to pay to the pilot rejected the fees as established by law unless the master shall show good cause to the contrary, which shall be satisfactory to the Board of Commissioners."

You will notice this section provides and speaks as to licensed pilot "who shall take or bring a steamer or vessel into port." In order to construe this statute it seems to me necessary to determine what is meant by "bringing a vessel into port."

"Port is a somewhat indefinite term. Its meaning is not exact, but depends upon the connection in which it is used." 49 Corpus Juris., page 1084.

With reference to what constitutes a port the Court in the case of Hamburg-American Steam Packet Co. vs. U. S., reported in 250 Fed. 747 uses this language:

"Perhaps it is not possible to give an exact definition of what constitutes a 'port' for loading or discharging; but, that a place may be a port, it seems that it should have somewhere for vessels to lie safely, and a shore where goods may be safely landed; also that there should be some convenience for trade, such as wharves and warehouses, and that it should be a place to which vessels are allowed to come by the government of the country."

In various cases where the question of port has been under consideration by the courts, the following words have been used: "At or off" the port. "Whether steamer is in berth or not." "Into port," etc.

It is my opinion that our Florida statutes relative to Pilots and Harbor Masters when speaking of port, means and refers to that section of the sea, river or inlet within what might be termed the harbor line, and which includes wharves and berths for steamers and the passage-way into the waters wherein the steamers may be stationed or anchored. Thus, I have reached the conclusion, and it is my opinion, that under Section 3879 of the Compiled General Laws, when the law speaks of "bringing a steamer or vessel into port," that it means guiding and directing and bringing

the steamer into and within that section of water as above defined to be within the harbor or recognized port line.

Section 3880, Compiled General Laws, fixes the rate of pilotage and these rates of pilotage shall be paid "by any vessel entering their port." It is my opinion that this means that the rates of pilotage are based upon and paid for the service of the pilot in bringing the vessel into, and thus within the port. It is also my opinion that the rates of pilotage as set forth in Section 3880 do not include the service of the pilot in berthing a vessel, or in moving a vessel from one station or berth to another, I think berthing a vessel or moving her from one station or berth to another are also acts of pilotage, but inasmuch as the statute does not prescribe these charges, I take it that these charges are matters of special contract, which may be made with the masters of the vessels and the licensed pilots.

Other sections of our statutes, Section 3902, 3907, etc., provide for the appointment of Harbor Masters. Section 3911 and 3912 of the Compiled General Laws of 1927 were originally Sections 5 and 6 of Chapter 3752 of the Acts of 1887. These sections are as follows:

"3911. *Duties as to boarding vessels, etc.* It shall be the duty of such officer, by himself or deputy, to board every vessel entering the port for which he is appointed, after such vessel has been released by the Health authorities of the port, to demand of the master the certificate of the vessel's release by such Health authorities and to deliver the same within twenty-four hours to the Secretary of the Board of Health. But it shall be unlawful for any such officer, in boarding such vessel under this article, to solicit from such vessel any business either for himself or any one else, and any violation of this provision by any such officer shall subject him to removal from his said office by the Governor, if such violation be committed by the Harbor Master, and if committed by any deputy harbor master, then by the harbor master whose duty it shall be in such cases to remove promptly such deputy."

"3912. *Stationing vessels.* It shall be the duty of the master of every vessel arriving in a port for which a Harbor Master shall be appointed, under the provisions of this article, to apply to such Harbor Master, or one of his deputies, for a station in the stream, or a berth at the wharves, and the Harbor Master or his deputy, shall forthwith station such vessel in the stream or at the wharves, as the case may be, so as to best facilitate the loading or discharge of such vessel, and at the same time interfere as little as possible with other vessels in the vicinity: but in stationing vessels at wharves or assigning them berths thereat, he shall conform in every instance to the wishes of the managers of such wharves as to their location at the same."

It will be seen that under Section 3911, it is the duty of the Harbor Master or his deputy to board the vessels entering the port for which he is appointed after such vessel has been released by the Health authorities

of the port, and to demand of the master a certificate of the vessel's release by such Health authorities and deliver the same to the Secretary of the Board of Health. This section, together with other sections of Chapter 3752, Acts of 1887, thus provides a definite place where the Harbor Master should board the vessel, which was after the vessel had been released by the Health authorities of the port. The Harbor Master or his deputy then being aboard the vessel, Section 6 of the above acts provides that the master of the vessel should apply to the Harbor Master or his deputy for a station in the stream or a berth at the wharves, and it is the duty of such Harbor Master or his deputy to forthwith station such vessel in the stream or at a wharf, etc.

At this time, as I understand it, the State is maintaining no health quarantine and, therefore, to that extent Section 5 of Chapter 3752, Acts of 1887, is not now practically applicable; but Section 6 of that act, which is now Section 3912 of the Compiled General Laws, does contemplate the Master of every vessel arriving in a port for which a Harbor Master shall be appointed, to apply to such Harbor Master or his deputy for a station in the stream or a berth at the wharves. This section, in my opinion, authorizes the Harbor Master or his deputy to board the vessel at and when it enters the harbor line of the port, otherwise there would be no way for the Harbor Master or his deputy to inform the master as to where to station his vessel in the stream or to berth it at the wharves.

Section 3915 of the Compiled General Laws, which was a part of Section 9 of Chapter 3752 of the Acts of 1887, provides that after a vessel has been stationed by the Harbor Master, a change of station shall be made by application to the Harbor Master, and it shall be the duty of the Harbor Master to make such change, and provides under what circumstances and the extent to which fees may be charged by the Harbor Master for such service. The question arises as to what is meant by stationing a vessel, or rather what are the duties of the Harbor Master or his deputies under Section 3912 of the Compiled General Laws?

Considering all of the various sections of our statutes pertaining to Harbor Masters and Pilots, I am impressed with the view, and it is my opinion that the acts of pilotage are services that are to be rendered by the Pilots; that the law makes a distinct cleavage between the duties of the Harbor Master and the Pilots. This view, in my opinion, is confirmed and substantiated by the opinion of District Judge Call in the case of the *James E. Newsome*, *Plumber vs. Atlantic Towing Company, et al.*, reported in 14 Fed. Rep. 2nd Series, where Judge Call uses this language in reference to Section 2502, Revised General Statutes, which is now Section 3912 of the Compiled General Laws:

"Under this section the authority of the Harbor Master is fully performed when he designates the position in the stream or at the dock as to best facilitate the discharge of cargo, and at the same time interfere as little as possible with other vessels in the vicinity. I find no authority vested in the Harbor Master or his deputy to do what this cross-libel alleges was done."

What the deputy Harbor Master of the port did in the above mentioned case was to board and take charge of the vessel and preventing the unloading of the cargo and towing the vessel to sea, etc.

While it is difficult to determine whether in the Newsome case above mentioned, the Harbor Master took charge of the vessel when she was inside or outside of the port, yet it is clear that the Court considered fully the authority of the Harbor Master, and states clearly that the Harbor Master's duty is to "designate the position in the stream or at the dock as to best facilitate the discharge of cargo." Thus, it is, I am of the opinion that:

First. The rates of pilotage provided for in Section 3880 of the Compiled General Laws, applies to the service of the Pilot, in bringing the vessel across the bar and within the harbor line, or port proper.

Second. That the act of handling and placing a vessel at a given point or at a wharf or dock is an act of pilotage, for which a reasonable charge can be made by the pilots, and is a matter of separate contract, inasmuch as the statutes do not cover this service.

Third. That the Harbor Master or his deputy has a right under Sections 2911 and 3912, Compiled General Laws, to board a vessel as she comes within the harbor line or within the port, for the purpose of doing and performing his duty under the law.

Fourth. That the duty under the law of the Harbor Master or his deputy is to designate the position in the stream or at the dock as to best facilitate the discharge of cargo.

Fifth. That the Harbor Master or his deputy as such Harbor Master or deputy, does not have the right to perform acts of pilotage, that is, bring the vessel into port, or taking charge of her and placing her at a designated point in the stream or at a wharf or dock, but these acts of pilotage fall within the duty and should be performed only by the licensed pilots of the port.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

PORT COMMISSIONERS—AUTHORIZED TO DISPOSE OF OLD
VESSELS IN HARBOR

July 20, 1932.

Dear Sir:

Replying to your favor of the 14th instant, permit me to say it appears that under the provisions of Section 2978, Compiled General Laws, the City of Tampa has the power to by ordinance make disposition of old vessels which have been abandoned and are going to pieces in the harbor of said city.

I do not find any provisions of law expressly applicable to abandoned vessels which may lie outside of the City of Tampa. It may be that it will be necessary for the Legislature to pass an act on the subject before the Port Commissioners would have authority to remove or destroy the abandoned vessels outside of the city limits.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INDUSTRIAL SCHOOL FOR BOYS

HON. MILLARD DAVIDSON, SUPERINTENDENT

JUSTICE OF PEACE—AUTHORIZED TO COMMIT BOYS TO
INDUSTRIAL SCHOOL

March 31, 1931.

Dear Sir:

Replying to your favor of the 28th instant addressed to Mr. J. C. Huskisson, Secretary Board of Commissioners of State Institutions, relative to commitments of boys from Volusia County by a justice of the peace court, I would state that Section 8644 of the Compiled General Laws of Florida is as follows:

"Convicted persons under eighteen years may be sent to Industrial School for Boys. When a person under the age of eighteen years is convicted before any court of an offense punishable by imprisonment in the county jail, or in the State prison, not for life, such court may sentence him to the Florida Industrial School for Boys, or to such other punishment provided by law for the same offense. If to the Florida Industrial School for Boys, the sentence shall be conditioned that if such person is not received or kept there for the term of their sentence, unless sooner discharged by the board of commissioners of State institutions, he shall then suffer such alternative punishment as the Court or Justice may designate in or by such sentence; but no child shall be committed to the Florida Industrial School for Boys who is blind, deaf and dumb, non compos or insane."

Section 8645 of the Compiled General Laws 1927, is as follows:

"Term of Commitment. When any boy shall be committed by the Judge of any court in the State of Florida to the Florida Industrial School for Boys said commitment shall be for such period as the committing judge shall deem proper, or until he shall reach his majority, or unless discharged earlier by the Board of Managers as reformed."

You will see that each of these acts provide for the conviction and punishment of boys *before any court*, and that they shall be committed by

the Judge "*of any court.*" The law of the State of Florida pertaining to dependent and delinquent children (see Section 3686, Compiled General Laws of Florida), says:

"But this section shall not apply to delinquent children under prosecution for crimes."

Therefore, it would seem to be clear that the Justice of the Peace, when he tries a boy for any minor crime which is within his jurisdiction, would have the right to commit the boy to your institution.

Trusting that this gives you the desired information, I beg to be

Yours very truly,

CARY D. LANDIS,
Attorney General.

TEACHERS—WHITE PEOPLE SHOULD NOT BE EMPLOYED TO
TEACH NEGROES

January 12, 1932.

Dear Sir:

This refers to your favor of January 6th, in which you ask me to give you an opinion as to whether or not you would be authorized to employ two white men as teachers for your colored boys in the place and stead of two negro women whom you now employ.

It is possible that the statutory prohibition against white persons teaching negro children would not apply to a reformatory school under the supervision of the State. Yet I would state that I took this matter up with the board, and they are unanimously of the opinion that this should not be done, regardless of the statute. In other words, the board feels very strongly that white people should not be employed to teach negroes or negroes to teach white people. But that if you need the help of these teachers, it might be best for you to employ two negro men instead of women, and provide that they have quarters with the negroes on the school property. And thus these men would be subject to use in extraordinary cases such as you mention in your letter.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BOARD STATE INSTITUTIONS—IN RE COMMITMENT AND
DISCHARGE OF BOYS AT INDUSTRIAL SCHOOL

August 1, 1932.

Dear Sir:

Referring to the inquiry which you made the other day before the board and to myself, I beg to advise that I believe Sections 8642 and 8647 of the Compiled General Laws cover the matters and things which you have in mind. These sections are as follows:

"8642. (6316). *Pardoning Board may commute punishment to commitment to Industrial School for Boys of certain persons convicted of crime; board may revoke commutation.* When any child under the age of eighteen years shall be sentenced by any court of competent jurisdiction to imprisonment in any county jail, or to the State's prison, it shall be lawful for the Pardoning Board, upon the application of such child, his parents or guardian, or other persons, to commute the punishment by substituting therefor the commitment of such child to the Florida Industrial School for Boys, during such time as the Pardoning Board may deem proper, unless sooner discharged by the Board of Commissioners of State Institutions. But if such child after being sent to such institution, shall persist in a depraved course, or escape therefrom, it shall be in the power of the Pardoning Board to revoke said commutation and to remand him to the State's prison or jail whence he came, to serve out his unexpired term."

"8647 (6321). *Board may, for certain reasons, refuse to receive person committed; incorrigible inmates committed to jail or prison.* When a child is sentenced to said school, and the Board of Commissioners of State Institutions deem it inexpedient to receive him or he is found incorrigible, or his continuance in the school is deemed injurious to its management and discipline, they shall certify the same upon the mittimus upon which he is held, and the mittimus and convict shall be delivered to any proper officer who shall forthwith commit such child to the jail, or State prison, according to his alternative sentence. The Board of Commissioners of State Institutions may discharge any child as reformed; and may authorize the superintendent, under such rules as they prescribe, to refuse to receive any person sentenced to said school and his certificate thereof shall be as effectual as their own."

Trusting this gives you the desired information, I beg to be

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

JUVENILE COURT JUDGE

CHILDREN—WHEN UNDER JURISDICTION OF

March 30th, 1932.

My Dear Judge:

This refers to your favor of the 29th instant.

If I understand the facts, they are, that in a certain divorce cause the Circuit Judge awarded the custody of the children to the mother. That some years later, and at this time, these children, or some of them, are in that situation, due to adverse home conditions and improper parental care that they have become a proper subject for the Juvenile Court.

It is my opinion that the Juvenile Court has jurisdiction, unless the father of these children should, on proper application to the Circuit Judge, procure a decree awarding the custody of these children to the father. Should the Circuit Court made a decree of this character it, of course, supersedes any act of the Juvenile Court, unless and until conditions might again become such as it is necessary for the Juvenile Court to take action for the protection of the children as well as society.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

MEMBERS OF THE LEGISLATURE
TAX CERTIFICATES—APPLICATION OF LAW

March 19, 1931.

My Dear Senator:

I have checked over the tax law, to-wit: Chapter 14572, which as I take it controls your situation.

It is my opinion that when tax certificates are sold under Section 42 of this chapter they are controlled by the same principles of law as to redemption as to other tax certificates sold at par in the usual course. The law appears to me to give to the purchaser of a tax certificate, even though at a reduced price, the right to exact through the process of redemption the full face of the certificate, plus interest, penalties and costs.

I presume that the attorney representing the holder of the tax certificates in which you are interested has thus figured the matter, all of which you can determine by a matter of calculation.

As to the redemption, I believe that the owner has the right to redeem at any time up to and until the tax deed has actually issued, or until all rights have been concluded by a final decree of foreclosure.

With assurance of respect and kindest personal regards, I beg to be

Yours very sincerely,

CARY D. LANDIS,
Attorney General.

COUNTY SUPERINTENDENTS OF PUBLIC INSTRUCTION—
CONSTRUCTION OF LAW IN RE COMPENSATION

May 14, 1931.

Dear Sir:

I have your letter of recent date asking my opinion in the construction of Section 551 of the Compiled General Laws of Florida of 1927, relating to the salaries of County Superintendents of Public Instruction.

Section 6 of Article VIII of the Constitution of Florida requires that the compensation of County Superintendents of Public Instruction be pre-

scribed by law. Section 551 of the Compiled General Laws is the only law we have fixing the salaries of such officers, except Sections 552 to 558, both inclusive, fixing the salaries of county superintendents in counties of certain population as in said sections designated.

The Legislature, by Section 551 of the Compiled General Laws, fixed the salaries of County Superintendents of Public Instruction based upon the total annual receipts of such county for school purposes, including special tax school districts and excepting borrowed money to the extent only of the minimum salaries in said section stated.

The Supreme Court of Florida, in the case of Rawls, et al., County Commissioner vs. State, ex rel, Nolan, Tax Assessor, 98 Fla., 103; 122 So. 222, said that public officers have no legal claim for official services rendered, except when, and to the extent that compensation is provided by law. The extent of the compensation provided by law for county superintendents of public instruction as fixed by Section 551 of the Compiled General Laws varies from \$50 per month in counties where the annual receipts are less than \$14,000 to \$200 per month in counties where the annual receipts are more than \$120,000 and less than \$200,000.

It is my opinion that the Constitution of the State of Florida and the decisions of our Supreme Court conclusively determine that the salaries of such officers cannot exceed the scale of compensation fixed as minimum salaries in Section 551 unless and until the Legislature by law prescribes a different salary or salaries, except in those counties coming within the population classifications of Sections 552 to 558 of the Compiled General Laws, both inclusive, and as to these counties there is probably a grave question as to whether these laws attempting to fix the salaries on the population classification are not violative of our Constitution in the light of recent decisions of our Supreme Court.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TRUCKS—IF SUBJECT TO PAYMENT OF FISH DEALER'S
LICENSE AND MOTOR VEHICLE LICENSE

May 15, 1931.

Dear Senator:

Replying to your inquiry of this date, relative to whether or not persons operating trucks under Georgia license and hauling fish from Wakulla County to points in Georgia are subject to the payment of a fish dealer's license and to the payment of a Florida motor vehicle license, and in which you ask to be advised as to whether or not Florida trucks engaged in the business of transporting fish from a point in Florida to the State of Georgia are subject to a fish dealer's license, permit me to say:

If the persons operating the trucks licensed by the State of Georgia are engaged in the regular business of transporting fish or other commodities

for hire, they would be subject to the Florida motor vehicle license tax, but if no fish were sold by them within the State of Florida, and they were merely engaged in transporting fish from the State of Florida to the State of Georgia, it does not appear that they would be subject to a fish dealer's license. Of course, the Florida trucks are subject to the payment of the Florida motor vehicle license tax, but if the persons operating such trucks do not sell fish within the State, either at wholesale or retail, but are merely engaged in the business of transporting such fish, it does not appear that they would be subject to the payment of a fish dealer's license under the law.

Trusting you will find this to be satisfactory, I am, with best wishes,

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX EXEMPTION—IF APPLICABLE TO REAL OR PERSONAL
PROPERTY—IF WIDOW ENTITLED TO

May 15, 1931.

Dear Sir:

Replying to yours of the 13th instant in which you ask to be advised whether the tax exemption applicable to heads of families in the sum of \$500.00 applies to real estate or personal property, permit me to say:

Article IX, Section 9, of the Constitution of the State of Florida, reads as follows:

"There shall be exempt from taxation property to the value of \$500 to every widow that has a family dependent on her for support." Section II of Article IX reads as follows:

"There shall be exempt from taxation to the head of every family residing in this State household goods and personal effects to the value of \$500.00."

Section 897, Compiled General Laws, reads as follows:

"Property to the value of \$500.00 to every widow that has a family dependent on her for support and to every person who is a bona fide resident of the State and has lost a limb or been disabled in war or by misfortune."

The statute does not appear to make a distinction between the exemption allowable between real and personal property.

You ask further to be advised if widows who have been at the head of families and are now left alone with their little homes without provisions for a livelihood are entitled to an exemption up to \$500.00 on any taxes levied. In reply permit me to say both the Constitution and the statute confine the exemption to widows having a family dependent upon them for support. It seems that under a strict interpretation of the constitutional and statutory provisions, if a widow does not have a family dependent upon her for support, she would not be entitled to the exemption. However, I am

advised that most of the tax assessors of the State have been making this exemption to all widows without making diligent inquiry into the question of whether or not widows had a family dependent upon them for support.

Trusting you will find this to be satisfactory, and with best wishes, I am

Yours very truly,

CARY D. LANDIS,
Attorney General.

INSOLVENT BANKS—CLASSIFICATION OF CLAIMS

May 23, 1931.

Dear Sir:

Dr. Moon has requested that I give you my opinion as to the classification of claim against an insolvent bank, the facts stated to be as follows:

Dr. Moon was receiver for the Citizens Bank of Inverness and Citrus County Bank of Inverness, and deposited the funds of such banks collected in the Bank of Crystal River, from which he from time to time remitted to the State Treasurer. The Bank of Crystal River became insolvent and was taken over by the Comptroller, and at the time of closing had on hand some of the funds deposited to the credit of Dr. Moon.

The question is whether his claim is a first preferred claim, a simple preferred claim or common claim.

Under the facts stated, it is my opinion that the claim referred to has no preference over the claims of other common creditors. When funds were deposited in the usual way of banking the relation of debtor and creditor was thereby established with reciprocal relations between the debtor and creditor, and the title to the funds deposited passed to the Bank of Crystal River, and there is nothing in the facts which would entitle the claim to a preference.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TRUSTEES COUNTY BONDS—CONSTRUCTION OF LAW IN RE COMPENSATION

May 28, 1931.

Dear Sir:

Section 2327, Compiled General Laws, the same being Section 1549, Revised General Statutes, 1920, reads as follows:

*"Compensations of Trustees—*The said trustees shall have such compensation for their services as follows: For receiving the first ten thousand dollars, one and one-half per cent; for all over ten thousand dollars, one-half of one per cent; for disbursements, the same as allowed for receiving, to be paid out of the county treasury."

The question then arises, are the trustees only entitled to one and one-half per cent on the first ten thousand dollars received and disbursed from the proceeds of bond sale and one-half of one per cent on balance of proceeds of bond sale, or does Section 2327 mean that the trustees are entitled to one and one-half per cent on the first ten thousand dollars received and one and one-half per cent on the first ten thousand disbursed and one-half of one per cent on receipts and disbursements thereafter.

Statute Section 2327, Compiled General Laws, is susceptible to either construction, for it is vague and indefinite. It does not appear that there has ever been a departmental ruling on the subject.

It is my opinion that the practical interpretation of the statute is to say that the trustees who receive money for interest and sinking fund only are entitled to one and one-half per cent for receiving and one and one-half per cent for disbursing the first ten thousand dollars and one-half of one per cent for receiving and one-half of one per cent for disbursing such funds thereafter, or until the bond issue is retired.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE ROAD DEPARTMENT—IN RE PURCHASE OF CONNOR'S
HIGHWAY, MATANZAS INLET BRIDGE AND SHANDS BRIDGE

June 18th, 1931.

Dear Sir:

This refers to your favor of the 18th instant, in which you state that you are in receipt of copy of my opinion rendered to Hon. Robert W. Bentley, chairman of the State Road Department, relative to Putnam County Memorial Bridge, and in which you request my opinion as to whether or not the Connor's Highway, Matanzas Inlet Bridge and the Shands Bridge come under the same opinion as to their eligibility to be purchased by the State Road Department, under House Bill No. 910, which is now a law.

I do not happen to know whether or not these bridges and the Connor's Highway are under outstanding bond issues, but I assume they are, and if they are, then my opinion rendered with reference to the Putnam County Memorial Bridge would be applicable to these bridges and to the Connor's Highway.

Very respectfully,

CARY D. LANDIS,
Attorney General.

CITY COMMISSIONERS—NOT AUTHORIZED TO REPEAL AN ACT
OF THE LEGISLATURE

July 24th, 1931.

My Dear Senator:

In response to your request for an opinion as to the authority of the City Commissioners of West Palm Beach to repeal an Act of the Legislature, I beg to advise as follows:

By the Constitution of Florida, all legislative authority is vested in the Legislature of the State of Florida, and this "Legislative Authority" has been construed by the Supreme Court to mean the power or authority to enact laws or to declare what the laws shall be, and that such authority appertains exclusively to the Legislative Department and cannot be delegated. See *State vs. Duval Co.*, 76 Fla. 180, 7980, 699.

It is my opinion, therefore, that the City Commissioners of the City of West Palm Beach are without authority to adopt a resolution abolishing or repealing the act in question, and that the adoption of such a resolution would not repeal the said act or affect its validity.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

LAWS—LEGISLATURE ONLY CAN REPEAL

July 24, 1931.

Dear Senator:

In response to your request for an opinion as to whether an act of the Legislature can be repealed by resolution of the City Commissioners of the City of West Palm Beach or by vote of the electors of said municipality, I beg to advise, as follows:

By the Constitution of Florida all legislative authority is vested in the Legislature of the State of Florida and this legislative authority has been construed by the Supreme Court to mean the power or authority to enact laws or to declare what the laws shall be, and that such authority appertains exclusively to the legislative Department and cannot be delegated. See *State vs. Duval County*, 76 Fla. 180, 79 So. 692.

It is my opinion, therefore, that the Act in question cannot be repealed by resolution of the City Commissioners of the City of West Palm Beach, or by vote of the electors of said municipality; that the Legislature is the only body having authority to amend or repeal laws enacted by the Legislature, and that such authority cannot be delegated to any other board, body or person; that the only method provided for the repeal of a law is by act of the Legislature.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—RE-ISSUE OF
STOCK NOT SUBJECT TO

Dec. 4, 1931.

Dear Senator:

This refers to your favor of December first.

Chapter 15787 apparently contemplates that the stamp tax on stock shall be on the original issue. It is my opinion that it does not cover a re-issue of stock held and owned by you, but the stock when first issued must be stamped, and then, of course, all stock transfers must be stamped in accordance with the provisions relating thereto in Schedule "A" of the Act.

Trusting that this makes my position with reference to this clear to you, and with my kindest personal regards, I beg to be

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT—IN RE ISSUANCE OF
BONDS FOR SCHOOL BUILDING IMPROVEMENTS

May 3, 1932.

Dear Senator:

Replying to your favor of the 27th instant, in which you ask to be advised the conditions upon which a special tax school district can issue bonds for school building improvements, and whether or not the amendment to Section 6 of Article IX of the Constitution relating to bonds, which was approved in the general election of 1930, is applicable to this kind of bond issue, and who are eligible to vote, permit me to say:

Section 720 of the Compiled General Laws of 1927, provides that whenever the residents of a special tax school district in any county in this State shall desire the issuance of bonds by said special tax school district for the purpose of acquiring buildings, enlarging, furnishing, or otherwise improving schools within any such special tax school district, they shall present to the county board of public instruction of the county in which the said district is located, a petition filed by not less than 25% of the duly qualified electors residing within the said special tax school district, setting forth in general terms the amount of the bonds desired to be issued and the purpose thereof, and that the proceeds derived from the sale of such bonds shall be used for the purposes set forth in the said petition; provided, that in special tax school districts located wholly or partially in cities of 25,000 population or more, according to the last Federal Census, the said petition may be dispensed with and the proposition of issuing bonds for the purposes as herein outlined may be initiated by the board of public instruction of the said county, or by the trustees of said special tax district, or by both bodies.

See Section 721 for amount of bonds and return of interest. See Section 722 for statute governing publication of resolution.

Section 723 provides that the board of public instruction shall at the meeting at which the resolution is passed, also order that an election shall be held in said special tax school district to determine whether or not there shall be issued by said district the bonds provided for in said resolution, in which election *only the duly qualified electors thereof who are freeholders shall vote*, and prior to the time of holding said election the said county board shall cause to be published once each week for four consecutive weeks in a newspaper published in said district a notice of the holding of said election which shall specify the time and place or places of the holding thereof. Or if there be no newspaper published in said district, then in some newspaper published in the county in which said district is located.

See Section 724 for law governing conduct of election, form of ballot, appointment of inspectors, and canvassing returns.

There are several other sections of the statute following in consecutive number bearing on the subject.

The amendment to Section 6 of Article IX of the Constitution adopted at the general election in 1934, relating to bonds, provides that a school district shall have power to issue bonds only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such districts shall participate.

See page 784, Acts of 1929.

Replying to your last question, in which you ask to be advised the length of time electors may have in order to qualify to vote in a special tax school district, in an election called on a bond issue, permit me to say the statute does not provide any definite time. See Section 723, Compiled General Laws.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STREET TAX—GENERAL LAW DOES NOT GOVERN

August 6, 1931.

Dear Senator:

Replying to your favor of the 5th instant in which you ask me to advise you whether or not a person living in an incorporated town should be required to pay a street tax, if such person pays personal and real estate tax, permit me to say:

The question of paying a street tax in an incorporated town is not governed by any general law. The tax is probably imposed by municipal ordinance, and if so we, of course, have no way of knowing what the provisions of the ordinance may be. We are therefore unable to advise you on this point.

With kindest regards, I am

Yours very truly,

CARY D. LANDIS,
Attorney General.

MOTOR VEHICLE LAW—ONLY OFFICERS AND ENLISTED MEN
EXEMPT FROM PURCHASE OF TAG.

August 31, 1931.

Dear Senator:

Replying to your favor of the 22nd instant in which you request my opinion on Sections 14 and 15 of the Florida Motor Vehicle Law, approved June 26th, 1931, and in which you ask to be advised whether or not officers and enlisted men other than those in the army and navy stationed in Florida to perform duties for the Federal Government are, under the terms of the Act, exempt from the purchase of a motor vehicle license tag, permit me to say:

Under the familiar rule that the express mention of one or more persons or things in a statute implies the exclusion of others, it is my opinion that the statute exempts only officers and enlisted men of the army and navy stationed in Florida to perform duties for the Federal Government.

Trusting you will find this to be satisfactory, and with best wishes, I am

Yours very truly,

CARY D. LANDIS,
Attorney General.

SHERIFFS—IN RE FEEDING PRISONERS.

October 6, 1931.

Dear Senator:

Replying to your favor of the 23rd ultimo, in which you ask to be advised whether or not there is a definite set figure that must be paid to the sheriff for feeding prisoners, permit me to say:

Section 2838 of the Compiled General Laws provides that the fees of the Sheriff for feeding twenty prisoners or less shall be 65c per day each. And for feeding all over twenty prisoners, 50c per day each.

Replying to your second question in which you ask to be advised whether or not the county commissioners are required to allow the sheriff to feed the prisoners, permit me to say:

It is my opinion that the county commissioners could provide for a person other than the sheriff to feed the prisoners. I am under the impression that such has been done in other counties.

Replying to your third question, permit me to say:

Under the law the county commissioners have the control and supervision of county convicts on the question of whether or not county commissioners might enter into an agreement with the State Road Department regarding the working, feeding, and clothing of county convicts. It might be possible for county commissioners and the members of the State Road Department to enter into such an agreement. We know of no instance, however, where this has been done, and I suggest that you take the matter up with the attorney for the State Road Department with a view to ascertaining what may be done in that respect.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY COMMISSIONERS—COMPENSATION IN
MADISON COUNTY.

October 31, 1932.

Dear Senator:

Replying to your letter of October 28th, in which you ask to be advised concerning the law relating to the compensation of county commissioners for Madison County, permit me to say I have checked both the State Census for 1925 and the Federal Census for 1930 and find that both give the population of Madison County as more than 15,000 and less than 16,000.

There are many special acts of a general nature fixing the compensation of county commissioners for the several counties. Some are based upon population of the 1925 State Census, some upon the Federal Census, and some are based both upon population and assessed valuation, which makes it very difficult to ascertain definitely the amount of compensation to be paid county commissioners in any particular county, unless one has before him both the State and Federal Census, and the assessed valuation of the county, etc.

I have checked the several statutes fixing commissioners' compensation based upon population, and I do not find one applicable to a county of the population of Madison County. Therefore, it is my opinion that the general law, Section 2204, Compiled General Laws, fixes the compensation of county commissioners in Madison County. This Section contains the following provision:

"The county commissioners shall be paid six dollars per day for each day's service, and ten cents per mile for each mile actually traveled in going to and from the court house: Provided, that the per diem pay shall not exceed * * * four hundred dollars in

counties of fifteen thousand population or over, and less than twenty thousand population; * * * Provided, that the per diem herein provided shall apply to services rendered for inspection of public roads or bridges, or any other services authorized and approved by the board of county commissioners. * * * ”

Replying to your second question, permit me to say Section 297, Compiled General Laws, provides that it shall be the duty of the county commissioners of each county, on the first Wednesday after the registration books are closed, in every year in which there is a general election, to examine and revise the registration books of said county, erasing therefrom the names of all such as have died, or removed from the county, or from one district to another in the same county, or who are otherwise disqualified to vote, and restoring such names as have been improperly taken off by the supervisor of registration; said examination and revision shall be completed within three days thereafter, and immediately the county commissioners shall cause to be published in the newspaper, if there be one published in such county, and also post at the court house door a list of the names, alphabetically arranged, that have been erased or stricken from the registration books of each district in such county, either by the supervisor of registration, or said board of county commissioners.

The Section from which I have just quoted appears to be a mandatory provision. However, there is no penalty provided in the Section for failure of the commissioners to perform the duties imposed, and unless a court of competent jurisdiction held the election to be illegal because of such failure, the election would be as valid as if the requirements of the statute had been complied with.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MOTOR VEHICLE COMMISSIONER

HON. W. S. McLIN

AUTOMOBILES—CITY GIVEN SPECIAL POWER TO REGULATE
WHEN OPERATED FOR HIRE—REFUND NOT AUTHORIZED.

January 22, 1931.

Dear Sir:

I have read the letter received by you under date of January 19th from Mr. Alfred M. Griggs, 114 N. E. 5th Street, Miami, Florida.

Under the charter of the City of Miami, that city is given special power to regulate cars running for hire on the streets of Miami. This power was contested before the Supreme Court and was upheld.

Under the Constitution of Florida cities and towns have broad powers with respect to what goes on inside the city limits, and the Legislature

has been prone to grant cities and towns almost unlimited authority in matters like those referred to by Mr. Griggs. Unquestionably, the purpose of all of these local acts is to create a monopoly in the right to conduct a taxi business. While it is unfortunate that Mr. Griggs has been left in the shape that he has, everyone is presumed to know the law, and the fact that he did not know about it does not excuse him.

In fact in this day and time, a man is hardly safe in drinking a Coca Cola without having special counsel at his elbow to advise him as to whether or not he is violating some new law that has been passed overnight. Half the time the lawyers themselves don't know what the law is, because they make them and change them so fast that it is impossible to keep up with the trend of legislation. It is a known fact that several members of the Legislature, while going home from the Capital after the session adjourned, were charged with violating laws they had passed during the session, about which they knew nothing.

On the question of refund of the \$41.00 license paid you for a for-hire tag, I regret that I am forced to advise that you have no power to make such refund. This license is still good for any place in the State of Florida and for any place in Dade County outside of the City of Miami. The law does not permit you to refund a license under the circumstances outlined in Mr. Griggs' letter.

My understanding of the Miami ordinance that Mr. Griggs mentioned is that if he conducts his business in a private place and does not use the city streets as a "stand" for conducting it, the city ordinance does not apply.

Trusting this explains the matter, I am

Yours very truly,

FRED H. DAVIS,
Attorney General.

BUSSES—LICENSE TAX—WHEN ENTITLED TO REFUND.

June 1, 1931.

Dear Sir:

With reference to application for refund to Lake Groves Corporation, and handing you the files herewith, I beg to advise, and concurring in the opinion rendered by my predecessor, The Honorable Fred H. Davis, it is my opinion that the Lake Groves Corporation are entitled to this refund on the theory that they paid a "For Hire" tax on passenger busses, whereas, in fact, they should have paid tax for "Private Use" only. I take it, from the facts set forth in the files, that these busses were used, as a matter of fact, for private use only; therefore, the "Private Use" tax should have been required, rather than the "For Hire," and they are entitled to a refund.

Very respectfully,

CARY D. LANDIS,
Attorney General.

MOTOR VEHICLES—LAW CONSTRUED IN RE GROSS
WEIGHT LIMIT.

September 3, 1931.

Dear Sir:

In further considering the opinion of this office dated August 24th, 1931, with respect to gross weight of motor vehicles on the highways of Florida, I wish to withdraw said opinion and to make the following correction: That opinion was rendered without consideration of that portion of Section 8 of House Bill No. I-X, approved June 26th, 1931, providing that nothing contained in that Act should be construed as repealing any part of Senate Bill No. 411 passed at the regular session of the 1931 Legislature.

I now find by proper consideration of that Act the law to be as follows: Senate Bill No. 411 passed at the regular session of the Legislature, and prior to the passage of House Bill No. I-X at the first special session of the Legislature provides a gross weight limit for those carriers certificated in common carriage of 24,000 pounds, and includes many safeguards as to highway conservation and protection of the traveling public.

House Bill No. I-X subsequently enacted by the Legislature specifically limits all motor vehicles to not more than 16,000 pounds gross weight, and then by specific reference to Senate Bill No. 411 preserves 24,000 pounds gross weight for certificated carriers meeting the other requirements prescribed by this law.

My opinion is, therefore, that the Railroad Commission in granting certificates of public convenience and necessity in common carriage may authorize gross weight of not more than 24,000 pounds. All other motor vehicles are by specific provisions of House Bill No. I-X limited to gross weight of 16,000 pounds or less, according to the character of the vehicle.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

MOTOR TRUCK—DUTY OF COMMISSIONER TO ISSUE LICENSE
TAG UPON APPLICATION

September 24, 1931.

Dear Sir:

Replying to your favor of the 22nd instant, with which you enclose copy of a letter from Mr. C. Vierhout of Fort Myers, and request an opinion from me on the subject of Mr. Vierhout's letter, permit me to say:

We note that Mr. Vierhout states that several merchants of Fort Myers intend to combine and buy a big truck to haul merchandise from Tampa, that he wishes to be advised whether or not such merchants will have to incorporate or form one corporation, in order to haul their own goods, or

if it would be sufficient just to be associated. We also note that he states that the merchants owning the truck do not intend to do any hauling for anyone other than the owners thereof, and that no hauling will be solicited.

We cannot say what the Courts would hold regarding such an association operating a truck as stated. It might be that the Courts would hold that such an association operating a truck as stated, will come within the provisions of Senate Bill 411, Acts of 1931. And they might hold that the truck was being operated for hire.

The only way in which these questions could be definitely settled would be for an association of persons, such as described in Mr. Vierhout's letter, to undertake the operation of a truck under the conditions stated, and have a test case brought before the Supreme Court.

On the question of your duties as Motor Vehicle Commissioner in the premises, we think that it would be your duty to issue the class of license tag called for by the application therefor.

Trusting you will find this to be satisfactory, and with best wishes, I am

Yours very truly,

CARY D. LANDIS,
Attorney General.

FOR HIRE LICENSE TAG—WHEN REQUIRED

November 13, 1931.

Dear Sir:

Replying to your favor of the 12th instant, with which you enclose correspondence between yourself and the Indian River Exchange Canneries, and request my opinion as to whether or not their proposed method of transportation would come under the terms of the Motor Vehicle License law requiring a for-hire license, permit me to say:

The Motor Vehicle License law defines "for-hire" to include all motor vehicles or trailers hauled by motor vehicles in use for transporting persons, commodities, or materials for compensation, or such motor vehicles as may be let or rented to another for a consideration.

In view of the provision in the statute as above quoted, it is my opinion that a person transporting by motor vehicle for hire or compensation, even though such person did not haul for anyone other than the Indian River Exchange Canneries, would be required to have a for-hire license.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BUSSES—SCHOOL—WHEN FOR HIRE LICENSE TAG REQUIRED

November 25, 1931.

Dear Sir:

Replying to your favor of the 21st instant relative to the class of automobile license tag required for school busses, which in addition to transporting school children to and from school also haul freight for hire, permit me to say it is my opinion that such busses should carry the regular for-hire license tag, as such busses would not be used *exclusively* for the transportation of school children.

Yours very truly,

CARY L. LANDIS,
Attorney General.

AUTOMOBILES—WHEN OWNER CEASES TO BE NON-RESIDENT

March 28, 1932.

Dear Sir:

Section 1293, Compiled General Laws of Florida, provides that a motor vehicle owned by a non-resident of this State other than a foreign corporation is not required to have a Florida license tag on it while being operated in this State, provided that at the time of the operation the non-resident owner of the car shall have complied with the laws of the State in which the non-resident has the car registered, and shall be at the time displaying his registration number of the State in which he is registered.

In Words and Phrases there are cases cited to the effect that the word "non-residents" may have different meanings in different statutes. Other cases cited hold that the word "residence" is not always synonymous with citizenship or habitation.

It is my understanding that it has been a departmental ruling of your office for sometime that a non-resident coming into this State and accepting employment or engaging in work ceases to be a non-resident under the intent and purpose of the above mentioned statute. I find also that the former Attorney General, Hon. Fred H. Davis, rendered opinions to the same effect, and I beg to advise that in my opinion this is a reasonable and correct construction of the above statute.

Yours very truly,

CARY D. LANDIS,
Attorney General.AUTOMOBILE TAG AGENCY—DUTIES IN RE ISSUANCE OF AND
COLLECTION FOR LICENSE TAGS

April 26, 1932.

Dear Sir:

Replying to your favor of the 21st instant, permit me to say where an auto tag agency issues a tag to a person and fails to collect the proper amount, I fail to see where the tag agent under the law could have a lien on the car. The section of the law governing this subject gives the State

a lien on the car, where a man has purchased no tag at all, but does not provide for any lien whatever where the wrong amount is collected when the tag is sold.

Replying to your second question, permit me to say it seems to me that the possession of an automobile license tag by a purchaser, which had been delivered to him by an auto tag agency, would be sufficient receipt or proof of payment in full for said tag, if the payment thereof by the purchaser should be brought into question.

Where a person purchases an automobile license tag and the agency does not collect the proper amount, the remaining amount is due the tag agent who sold such person a tag, and not the Motor Vehicle Commissioner. The Motor Vehicle Commissioner looks to the auto tag agent to pay the State the proper amount, as the tag agent's bond is liable for any deficit that may exist between the agent and the Motor Vehicle Department.

If the Motor Vehicle Commissioner should be required to collect and be held responsible where a tag agent sold a license plate for less than the correct amount, some tag agents might sell a license plate for much less than the proper amount, or might deliver a tag on credit, or accept a worthless personal check, and then notify the Motor Vehicle Commissioner to collect the difference.

It is for this reason that the Motor Vehicle Commissioner requires the tag agent to furnish a bond. The presumption is, of course, that the tag agency knows the proper amount to charge, and that it will not deliver a tag without collecting the amount prescribed by statute. Where a tag is delivered to a person for less than the proper amount, and the person receiving the tag refuses to pay the difference, I know of no way in which such person could be compelled to pay.

Yours very truly,

CARY D. LANDIS.
Attorney General.

DISABLED WAR VETERAN—WHEN MOTOR VEHICLES EXEMPT
FROM LICENSE TAG

April 28, 1932.

Dear Sir:

I am in receipt of your letter of the 26th, ultimo, advising that a disabled veteran running a truck for hire for the purpose of taking dairy products to Tampa has no other occupational exemption, and you make the inquiry whether he is subject to the regulations in Chapter 14764, Acts of 1931.

In reply I beg to call your attention to Section 30 of the above mentioned Act, which specifically exempts motor vehicles transporting dairy products under certain conditions which are probably covered in the case mentioned by you.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TRUCKS—"PRIVATE USE RATES" APPLICABLE

September 23, 1932.

Dear Sir:

Replying to yours of the 13th inst., with which you enclose a letter from Mr. M. R. Howerton, Manager of Hertz Stations, describing in detail the manner of business conducted by his company, permit me to say it appears from the statements contained in Mr. Howerton's letter that his company buys trucks and then leases them to such companies as may wish to pay them a rental therefor. It appears from the statements contained in the letter explaining the manner of business conducted by Hertz Stations that their trucks could not be classed as either public or private carriers, the trucks being leased and used exclusively by one company while the ownership thereof remains in the Hertz Stations. Therefore, it is my opinion that the only license tag that could be required for these trucks are those carrying the "private use rates."

Yours very truly,

CARY D. LANDIS,
Attorney General.

SHELL FISH COMMISSIONERS

HON. E. C. STRICKLAND

SPONGE FISHING—CERTAIN RULING NOT AUTHORIZED BY LAW

August 13, 1931.

Dear Sir:

Replying to your favor of the 10th instant, in which you state that former Shell Fish Commissioner Hodges held that sponge divers could not operate within nine miles of the shore, and that the waters should be three and one-half fathoms deep, permit me to say that we do not find a statute prohibiting sponge fishing within nine miles of the shore, nor do we find a statute confining a sponge fisher to waters three and one-half fathoms in depth. This may have been a departmental ruling by the former Commissioner, which does not appear to be authorized by statute.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WORLD WAR VETERANS—WHEN EXEMPT FROM PAYMENT
FISH DEALER'S LICENSE

October 16, 1931.

Dear Sir:

War veterans are exempt from the requirement of a license to operate a business or a profession only when such business or profession is carried on mainly through the personal efforts of the licensee for the livelihood of such business. This exemption applies only to one business or occupation for each veteran and must be confined to such business or occupation, which is carried on mainly through the personal efforts of the licensee. In other words, the applicant is entitled to only one license.

If different licenses are required for wholesale and retail dealers in fish and oysters, then one person would not be entitled to exemption as to both. If one license may be issued for the business of wholesale and retail dealer in fish and oysters, and such business may be carried on mainly through the personal efforts of the applicant, and he is otherwise entitled to the license, then such license may be granted without the payment of the tax.

Respectfully yours,

CARY D. LANDIS,
Attorney General.LICENSE TAX—WHOLESALE AND RETAIL FISH DEALERS
DIFFERENTIATED

November 13, 1931.

Dear Sir:

Replying to your favor of the 10th instant, in which you request an opinion regarding the class of fish dealers who are entitled to wholesale or retail license, permit me to say:

We understand your Department has ruled that a wholesale fish dealer is a person, firm, or corporation maintaining a definitely located wholesale place of business, and selling only to customers who are retail fish dealers, under which wholesaler's license they are permitted to deliver from such wholesale store to customers anywhere in the State of Florida.

We understand further that your Department has ruled that a retail fish dealer is a person, firm, or corporation having a definitely located retail store from which fish are sold to consumers, and that a person, firm, or corporation not maintaining a definitely located wholesale or retail place of business, but who buys fish and loads them on trucks for sale to any person offering to purchase, is a peddler and should be required to pay a peddler's license.

Paragraph (f), Section 12, Chapter 14491, Acts of 1929, reads as follows:

"Persons, firms or corporations selling merchandise from boats or vehicles shall pay a license tax of \$50.00 for each boat or vehicle

for each county; provided this shall not apply to farmers selling their own produce. Provided, further, that this shall not apply to any portable store which shall sell and deliver from a place of business, which business pays merchant's license."

It is the policy of the Attorney General on doubtful questions of law to adopt and follow the interpretation of the State Departments. It is my opinion that your construction of the intent and purpose of the laws providing for the licensing of wholesale and retail fish, is reasonable and would probably be upheld by a court of competent jurisdiction in a test case.

Therefore, we think that you are authorized to enforce the payment of license taxes according to the rulings of your Department as outlined above. Of course, any person, firm or corporation who does not agree with your construction of the law is at liberty to contest the issue in a court of competent jurisdiction.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

LICENSE TAX—CITIES AND TOWNS PROHIBITED FROM LEVY- ING ON FISH INDUSTRY

December 3, 1931.

Dear Sir:

Replying to your favor of the 25th instant, permit me to say under the provisions of Section 1268, Revised General Statutes, counties, cities and towns are expressly prohibited from levying a license tax on a person engaged in the fishing industry, who has received a license from the State.

Inasmuch as the person referred to in your letter was convicted and sentenced and served fifty days in jail in a prosecution by the City of Yankeetown, we know of no redress.

However, we think that the city had no authority to impose a tax, and no authority to prosecute a person for failure to pay it.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WATER BOTTOMS—IN RE LEASING AND CULTIVATING FOR GROWING OYSTERS AND CLAMS

February 15, 1932.

Dear Sir:

Replying to your letter of the 8th instant, I beg to advise that citizens of the State of Florida, and firms composed of citizens of the State of Florida, and Florida corporations domiciled in this State, and foreign corporations qualified to do business in this State, are authorized to lease from

the Commissioner of Agriculture water bottoms for the purpose of growing oysters and clams. But no person, firm or corporation shall lease, hold, or control, directly or indirectly, more than 500 acres of such water bottoms, by any scheme, agreement, understanding, or combination whatsoever.

Answering your question numbered 1, I beg to advise that there is nothing in the statute to prohibit lessees of water bottoms from lawfully contracting with another person, firm or corporation to plant, cultivate, and—or harvest their bottoms and selling the production therefrom to such person, firm or corporation, provided the arrangement or contract for the planting, cultivating, and—or harvesting such bottoms and the sale of the production therefrom does not give to such person, firm or corporation the control over the water bottoms so planted, cultivated, and—or harvested in violation of the statute prohibiting persons, firms and corporations from leasing, holding, or controlling more than 500 acres of such bottoms. Any scheme, agreement, understanding, or combination whatsoever, giving to any person, firm or corporation control over more than 500 acres of such water bottoms, would be a subterfuge and in violation of law, and should not be permitted.

I have examined the application form submitted with your letter, and find the same to be in substantial compliance with the statute. All files attached to your said letter I herewith return.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SHRIMP—DEALERS REQUIRED TO PAY LICENSE

March 8, 1932.

Dear Sir:

In response to your request for an opinion as to the requirement for a wholesale dealer's license to engage in the business of wholesale dealer in shrimp, I beg to advise that in my opinion such a license is required under the law.

Chapter 10123, Acts of 1925, is an Act to protect and regulate the salt water fishing industry in the State of Florida. In this Act shrimp is treated as other salt water fish.

Section 6 of the Act makes it unlawful to take shrimp or prawn from any of the inside waters of the State of Florida by the use of any device other than that known and commonly called a cast net.

Section 7 of the Act, which is brought forward as Section 1866 of the Compiled General Laws of Florida, 1927, provides that "a resident wholesale fish dealer shall be required to pay an annual license tax of \$50 * * *."

In my opinion it was intended that this Act was for the protection of shrimp classed as salt water fish, and to require a license of dealers in shrimp, and that a wholesale fish dealer's license under said Act authorizes wholesale dealing in shrimp.

Yours very truly,

CARY D. LANDIS,
Attorney General.

OYSTER BOTTOMS—APPLICATIONS FOR LEASES

April 25, 1932.

Dear Sir:

This refers to your favor of the 22nd instant.

I note that you have applications signed by citizens of the State of Florida covering all of the available bottoms for oyster planting in Apalachicola Bay. That you are receiving further applications from other persons covering the same bottoms, and that you are acting on the theory that the first persons applying have preference over all other applicants, other than riparian owners. I am of the opinion that you are acting correctly. Section 1799 of the Compiled General Laws, 1927, undoubtedly gives the first applicant the preference, unless a riparian owner makes application for the same bottoms. If the riparian owner makes application for the same bottoms, he is entitled to the bottoms to the extent of the amount he can hold by lease, to-wit: five hundred acres.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CRAWFISH—WHEN UNLAWFUL TO POSSESS OR TRANSPORT

May 19, 1932.

Dear Sir:

Replying to your favor of the 16th instant, in which you request my interpretation of Section 3 of Chapter 14703, Acts of 1931, permit me to say the section of the chapter above mentioned makes it unlawful for any person to transport or possess crawfish during the closed season, to-wit: March 21st to July 21st, except crawfish lawfully imported from a foreign country for re-shipment from port of entry to points outside the territorial limits of the State of Florida.

Shipment of imported crawfish is expressly prohibited during the closed season, unless re-shipped from port of original entry to points outside the territorial limits of the State of Florida, accompanied by certified invoice.

In view of the provisions of the statute it appears that it would be unlawful for any person, firm or corporation at any point in the State, to be in possession of crawfish during the closed season, except crawfish lawfully imported from a foreign country, and that it would be unlawful to ship any crawfish, even those lawfully imported from a foreign country, except from port of entry to points outside the State, where such shipments are accompanied by certified invoice.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FISH DEALERS—WHEN RETAIL AND WHOLESALE LICENSE REQUIRED

June 17, 1931.

Dear Sir:

Replying to yours of the 11th instant in which you state that there are a large number of stores in the State who not only sell fish directly to consumers but also sell to hotels and restaurants, and in which you ask to be advised whether or not, under Section 1259 of the Revised General Statutes, a fish dealer who sells directly to consumers and to hotels and restaurants can be properly classified as a retail dealer, permit me to say it appears that a person, firm or corporation selling both directly to the consumer and to hotels and restaurants is doing both a retail and a wholesale business and should therefore be required to have a retail and wholesale license.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE ATTORNEYS

INHERITANCE TAX LAW—DUTY OF STATE ATTORNEY

July 25, 1931.

Dear Sir:

This is in reply to your favor of the 23rd instant, in which you state that a resident of your county died in Virginia. That he was on his way from Sarasota to his former home in Massachusetts and that you understand that the executor is expecting to probate the will in Massachusetts.

These matters are handled in the first instance by Hon. Ernest Amos, State Comptroller, and I would suggest that you advise him the name of the party, as near as you can the date of the death, what if any property there is in Florida and whether or not it can be established that his residence

is here. This duty, I think, would fall upon the State Attorneys of the various circuits, and then it may be that after Mr. Amos makes demand upon the executor or the foreign State for the payment of the tax, that the Attorney General's office or the State Attorneys will be required to handle the matter further upon direction from the Comptroller's office. If you will kindly get this information to Hon. Ernest Amos I will appreciate it.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

APPROPRIATION BILL—SALARY OF STATE ATTORNEY

August 22, 1931.

Dear Sir:

Replying to your favor of the 8th instant, reply to which has been delayed on account of urgent matters which required my attention, permit me to say:

Senate Bill No. 54-XX, which is entitled: "An Act to Fix the Annual Salaries of Certain State Officers and Employees," and which took effect July 1, 1931, provides that the salary of State Attorneys heretofore receiving a salary of \$3,600.00 per annum shall be \$3,300.00 per annum.

Chapter 12275, Acts of 1927, providing that the salaries of State Attorneys in circuits having two counties and a population of more than 60,000 according to last State or Federal census shall be \$5,400.00 per annum, undoubtedly contemplated the State census of 1925 and Federal census of 1920 and not the Federal census of 1930. Therefore the salary of the State Attorney in the 17th Judicial Circuit was fixed by law at \$3,600.00 per annum and that salary paid to the State Attorney prior to July 1, 1931, was the correct amount. Therefore your salary under the provisions of Senate Bill No. 54-XX beginning July 1, 1931, is fixed at \$3,300.00 per annum.

We are enclosing herewith copy of Senate Bill No. 54-XX for your information.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PUNISHMENT—INFORMATION MAY BE FILED BY STATE ATTORNEY UNDER CHAPTER 12022, SECTION 3

August 26, 1931.

Dear Sir:

Replying to your favor of the 17th instant permit me to say it is my opinion that you are authorized by Section 3 of Chapter 12022 to file an information in the county in which a person may be convicted of a felony accusing such person of previous convictions of felony. It is my view that

the proceeding provided for in Section 3 of Chapter 12022 is one to advise the court of the degree of punishment that may be imposed and that it is not a trial to determine guilt or innocence as contemplated by Section 8363, which provides that no person shall be tried for felony in the Circuit Court except upon indictment found by grand jury.

We know of no instance where the State Attorney has filed an information as suggested herein; however, it would do no harm to test the matter out if you feel so disposed.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WESTERN UNION TELEGRAPH CO.—STATE ATTORNEY NOT
AUTHORIZED TO SEARCH FILES WITHOUT CONSENT
OF MANAGEMENT

August 31, 1931.

Dear Sir:

Replying to your favor of the 25th instant with which you enclose a telegram from Mr. J. B. Cheatham, District Superintendent of the Western Union Telegraph Company, and in which you ask for my opinion regarding the authority of the State Attorney under Section 4741, Compiled General Laws, permit me to say the section of the statute does not appear to authorize the State Attorney to search the files of the telegraph office for evidence without the consent of the company management.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX CERTIFICATES, REDEMPTION—COUNTY, DISTRICT OR
MUNICIPALITY MAY DECLARE CLASS OF BONDS
TO BE ACCEPTED FOR

September 10, 1931.

Dear Sir:

Replying to your favor of the 4th instant in which you make inquiry regarding Senate Bill 852, which provides for the acceptance of bonds, interest coupons and other due or past due obligations of a county, district or municipality in the redemption of tax certificates and in which you ask to be advised regarding the special Act known as Senate Bill 933, Chapter 15056, Acts of 1931, the same being an Act confined to counties having a population of not less than ten thousand and not more than eleven thousand, permit me to say:

It is my opinion that the governing authority of the county, district or municipality may by resolution declare what class of bonds may be accepted.

I have heretofore advised Hon. Ernest Amos, State Comptroller, that in my opinion the special Act referred to above is in conflict with the general Act on the same subject and that it is violative of Sections 20 and 21 of Article III of the Constitution of the State of Florida and that no effort should be made to enforce the same.

Yours very truly,

CARY D. LANDIS,
Attorney General.

HIGH SPRINGS SPECIAL ROAD AND BRIDGE DISTRICT—TRUSTEES SHOULD COMPLY WITH LAW

November 2, 1931.

Dear Sir:

Replying to your favor of the 24th instant relative to High Springs Special Road and Bridge District, permit me to say:

I have carefully read Chapter 15617, Acts of 1931, which requires bond trustees of said district to remit the funds of the district on deposit to the State Treasurer as County Treasurer ex officio to be held and disbursed by him for the use and benefit of said district for the purpose of paying and retiring the principal sum and interest coupons of bonds issued for the district.

The Act repealed all laws in conflict therewith, and it appears to be in every particular a valid enactment. It seems to me that it is the duty of the trustees to comply with the terms of the Act.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—BONDS AND DEEDS ISSUED BY
CHURCH CORPORATION NOT EXEMPT

January 7, 1932.

Dear Sir:

Replying to your favor of the 4th instant, in which you ask whether or not it will be necessary to place documentary stamps on refunding bonds issued by the First Baptist Church of Gainesville, a corporation, in the sum of \$45,000, secured by a trust deed dated December 21, 1931, permit me to say the statute does not appear to authorize an exemption in favor of bonds issued by such corporation.

I am aware that the statutes exempt church property from taxation.

But I think the exemption applies to ad valorem tax on the property itself, and does not extend to the stamp tax on bonds or deeds issued by a church corporation. I regret that the exemption cannot be allowed in this case.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WITNESS FEES—METHOD OF PAYMENT WHEN CASE TRANS-
FERRED TO ANOTHER COUNTY

February 2, 1932.

Dear Sir:

Replying to your favor of the 26th ultimo, in which you ask to be advised regarding which county should pay witness fees where a criminal case is transferred from Highlands County to DeSoto County, permit me to say DeSoto County should pay the witness fees and be reimbursed by Highlands County.

Relative to your second proposition in which you state that a material witness is in the State of Texas and will not appear at the trial unless funds are advanced to pay his expenses, permit me to say I do not know how the funds could be acquired unless either DeSoto or Highlands County can advance the money. The State can pay for witnesses before the Grand Jury, but I know of no authority for the State advancing money to have a witness come from another State to testify in the trial of the criminal case.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PREACHERS' RELIEF FUND—IF LAW INCORPORATING CERTAIN
PERSONS AS TRUSTEES IS VALID

February 5, 1932.

Dear Sir:

Replying to your favor of the 1st instant, relative to taxing property owned by the trustees of the "Preachers' Relief Fund of the Florida Conference of the Methodist Episcopal Church, South," and their successor trustees appointed by said conference, with reference to which you ask my opinion as to whether or not Chapter 3662, Laws of Florida, Acts of 1885, incorporating certain named persons as trustees of the Fund, is a subsisting valid law of the State of Florida, permit me to say:

If Chapter 3662, Laws of Florida, Acts of 1885, was brought forward and re-enacted in the Revised General Statutes of 1920, and has not been subsequently repealed or amended, it would be a valid statute as originally enacted until judicially declared to be invalid. However, if it was not re-enacted in the Revised General Statutes of 1920, I doubt that it would be a law of Florida.

Of course, you are familiar with the provisions of Paragraph 3 of Section 697, Revised General Statutes of 1920, exempting from taxation the property of benevolent institutions, the said property being "actually occupied and used by them solely for the purpose for which they have been or may be organized."

Yours very truly,

CARY D. LANDIS,
Attorney General.

PREACHERS' RELIEF FUND—WHEN TAX EXEMPTION ALLOWED ON PROPERTY

February 23, 1932.

Dear Sir:

Replying to your letter of the 8th instant, permit me to say:

It is my opinion that Chapter 3662, Acts of 1885, creating a body corporate and politic under the name and style of "The Trustees of the Preachers' Relief Fund of the Florida Conference of the Methodist Episcopal Church, South," and providing that all property and funds held by said trustees for the purpose of creating a fund for aged and worn-out preachers and their widows and orphans shall be free from taxation, in effect amounts to a contract between the State and the body corporate, and the exemption from taxation cannot be held to be abrogated or impaired by subsequent legislation. Therefore, property and funds held by the trustees of the Preachers' Relief Fund of the Florida Conference of the Methodist Episcopal Church, South, are exempt from taxation when and only when such property and funds are used for the purposes and objects expressed in Section 2 of Chapter 3662, Acts of 1885.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INQUEST—WHEN COUNTY JUDGE AUTHORIZED TO HOLD

March 31, 1932.

Dear Judge:

This refers to your favor of the 29th instant, relative to Section 8519 of the Compiled General Laws of Florida, 1927.

It is my opinion that under this section of the law the County Judge has no authority to hold an inquest, unless the Justice of the district in which the death occurs shall for some reason be unable to hold the inquest. It is my opinion that it was the intention of the law that all inquests should

be held by the Justice of Peace, unless for some reason a Justice is unable to hold the inquest, then the jurisdiction covering the inquest is extended to the County Judge or to a Justice of an adjoining district.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

MURDER TRIAL—IN RE CONVICTION—NEW TRIAL

July 8, 1932.

Dear Sir:

This refers to your favor of the 6th instant.

It is my opinion, and I believe the law is clear, that if a man is convicted of murder in the first degree with recommendation of mercy, and a new trial is granted, that he may then be convicted on a second trial of murder in the first degree without recommendation of mercy. On the other hand, if the man is convicted of second degree murder on a first degree murder indictment, and a new trial granted, he can never be convicted on the second trial of a higher degree than second degree murder, for in the first trial, the finding him guilty of murder in the second degree was an acquittal as to the charge of murder in the first degree. My understanding is, however, that this does not apply with reference to the matter of recommendation to mercy.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

PRISONERS—IN RE FEEDING

August 24, 1932.

Dear Sir:

I am in receipt of your letter of August 20, relative to County Commissioners advertising for bids for feed of prisoners in the county jail and making inquiry as to whether some one other than the Sheriff can be authorized to feed such prisoners.

In reply, I call your attention to Section 8211, Compiled General Laws of 1927, requiring sheriffs to turn over prisoners to their successors which seems to contemplate that the Sheriff shall have charge of the jail and the prisoners.

Sections 2838 and 8544, Compiled General Laws of 1927, formerly Sections 976 and 4108, General Statutes of 1906, provide respectively that the Sheriff shall make out and present his bill for feed of prisoners, and that the County Commissioners under certain conditions may advertise for bids for feeding prisoners.

These two statutes were construed by our Supreme Court in the case of Hillsborough County Commissioners versus Jackson, 58 Fla. 210, 50 So. 423, in which it was held that Section 2838 prevailed over Section 8544. This case was based on alternative writ of mandamus requiring the Sheriff to permit one C. L. Woolweaver to enter the jail and feed the prisoners, and came to the Supreme Court upon alleged error in the Circuit Court in sustaining a demurrer and dismissing the writ. The action of the lower court was affirmed. I think the decision in this case answers your inquiries.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE AUDITOR
HON. W. S. MURROW

FEES COUNTY OFFICERS—PALM BEACH COUNTY—REPORT
REQUIRED

July 23, 1931.

Dear Sir:

This refers to your favor of the 22nd instant, in which you ask for my opinion with reference to Tax Assessor and Tax Collector of Palm Beach County and their contention with reference to reporting commissions paid on assessment and collection of taxes for the Everglades Drainage Board, the Everglades Fire Warden Tax, the Okeechobee Flood Control District tax, and certain other special district tax in Palm Beach County, and, particularly, Palm Beach Drainage and Highway District, created by Special Acts of 1919, Chapter 7975, on page 105 of Volume Two of the Acts of 1919.

Chapter 11954 of the Acts of 1927 fixes the compensation of county officials at a prescribed proportion of the net income from the office. The Supreme Court of Florida has held that such a basis of classification for compensating county officials was valid. See: *State ex rel Buford vs. Spencer*, 81 Florida 211, 87 So. 634.

Under Chapter 11954, Acts of 1927, it is clearly my opinion that each county official must report all moneys received by him, whether in the nature of salary, commissions, fees or any other remuneration where it is received by virtue of his occupying office. See: *Supreme Court Opinion in case of Flood vs. State ex rel. Board of County Commissioners of Dade County*, reported in 129 So., page 861, where the court says:

"(7, 8) We do not think there is any basis for this contention. Section 12 of Article 16 of the Constitution provides that 'no person shall hold, or perform the functions of, more than one office under the government of this State at the same time.' If he cannot hold or perform the functions of more than one office at the time, it follows that he cannot collect compensation for more than one office for the like period. In addition to being

contrary to public policy as thus expressed, this contention is concluded by the very terms of Chapter 11954, Acts 1927, which prescribes a maximum compensation for all county officers paid wholly or in part by fees and commissions or both. The fact of his being constituted clerk of the Civil Court of Record and clerk of the Court of Crimes of Dade County amounts merely to the imposition of extra duties on the plaintiff in error as clerk of the Criminal Court of Record which the Legislature had right to impose. *Whitaker vs. Parsons*, 89 Fla. 352, 83 So. 247; *Amos et al., vs. Matthews (Fla.)* 126 So. 116 So. 208. None of these duties are inconsistent, and all fees and commissions collected by him in their performance should be reported as required by Chapter 11954, Acts 1927."

I note that you say that there is a contention made and especially with reference to Section 15 of Chapter 7975, and that the fees collected under this chapter would not come within the provisions of Chapter 11954, for the reason that this work could be done by anyone else. There is no merit to this contention, and, in my opinion, the court has clearly held to the contrary. Under Chapter 7975, Laws of Florida, it provides for certain fees to be paid and collected by the Tax Assessor, Tax Collector, etc.

The Legislature could have placed this duty possibly on somebody else, but the Legislature did not see fit to do that, but did place it upon the Tax Assessor, Tax Collector, etc., of Palm Beach County, and whatever fees and emoluments are collected and received by virtue of the fact that the party is a tax assessor or tax collector, clearly brings it within the rule of Chapter 11954 and the opinion of the Supreme Court referred to, and such fees must be reported as a part of the collections of the office. In my opinion, the law at this time has clearly settled that every fee and every remuneration of any kind or character received by virtue of the office must be reported in accordance with the requirements of Chapter 11954.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

FEES—COUNTY OFFICERS VOLUSIA COUNTY

November 19, 1931.

Dear Sir:

Replying to the several questions presented by Assistant State Auditor, Mr. A. J. Henry, in his letter addressed to you under date of November 12th, per mit me to say:

Chapter 14704, Acts of 1931, created the Criminal Court of Record in and for Volusia County, Florida, Section 2 provides that said court shall be a court of record. Chapter 11893, Acts of 1927, fixed the fees of the clerks of the various courts of record, and the clerks of the Circuit Court as recorder. Therefore, the fees to be charged by the Clerk of the Criminal Court of Record in Volusia County are those provided for by Chapter 11893, Acts of 1927.

Section 1 of Chapter 7881, Acts of 1919, the same being Section 8244, Compiled General Laws, provides that in counties having less than ninety thousand population and less than two circuit judges, the Solicitor shall be paid three dollars per diem monthly by the county, a conviction fee of ten dollars for each felony, and five dollars for each misdemeanor.

Section 8234, Compiled General Laws, requires the judge of the Criminal Court of Record to pronounce judgment of conviction upon pleas of guilty in all criminal cases pending therein on information or indictment.

Inasmuch as Volusia County has less than ninety thousand population and less than two circuit judges, the compensation of the Solicitor of the Criminal Court of Record of Volusia County is governed by Section 8244, Compiled General Laws, and the compensation to which he is entitled is \$3.00 per diem, payable monthly, and a conviction fee of ten dollars for each felony, and five dollars for each misdemeanor.

A judgment of conviction on a plea of guilty is in contemplation of law a conviction, and the Solicitor is entitled to his conviction fees on such judgments.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY BOND TRUSTEES—APPLICATION OF LAW IN RE FEES

July 1, 1932.

Dear Sir:

Replying to your inquiry of sometime ago relative to compensation for County Bond Trustees which has been somewhat delayed on account of other matters, I beg to advise as follows:

Section 608, Revised Statutes of 1892, provided that Trustees of County Bond Funds should have such compensation as may be allowed by law to the County Treasurer, their compensation to be paid out of the county treasury.

Section 615, Revised Statutes of 1892, provided that the fees of the County Treasurer should be one and one-half percent for receiving the first \$500.00, the same for disbursing the first \$500.00, and one percent for receiving all over the first \$500.00 and the same for disbursing.

These same provisions in identical wording were brought forward in the General Statutes of 1906 as Section 804 affecting trustees and Section 821 affecting county treasurers.

In 1911, Chapter 6241 was enacted changing the fees of county treasurers, but did not change the fees of trustees which by reference are those set out in Section 821, General Statutes of 1906, but county treasurers being abolished by the Acts of 1915, Section 1549 was substituted for Section 804 of the General Statutes when the Revised General Statutes of 1920 were made into law in 1921 setting out the provisions of the 1911 Act, viz:

"The said trustees shall have such compensation for their services as follows: For receiving the first ten thousand dollars one and one-half percent; for all over ten thousand dollars one-half of one percent; for disbursements, the same as allowed for receiving to be paid out of the County Treasury."

Therefore, fees of Trustees were those fixed by Section 608 and— or 615, Revised Statutes, until 1921 when Section 1549, Revised General Statutes, became the law as to fees for Trustees.

The language of the statutes fixing the rate of compensation of county treasurers and that of tax collectors being almost identical, and it appearing that the intent was to base the compensation of such officials on the receipts and disbursements handled each year, therefore, since bond trustees' fees were fixed the same as that of county treasurers, I would construe that such trustees as a body and not each separately are entitled to compensation on the receipts and disbursements handled by them each year as provided by the statutes above cited.

It is my opinion that where trustees of county bond funds invest interest and sinking funds in their own bonds, this should not be held to be a disbursement such as would entitle the trustees to the statutory compensation for disbursing funds, for this would not be a disbursement in the strict sense of the statute, but would be more in the nature of a transfer of funds.

It is my opinion that where trustees of county bond funds invest sinking funds in the bonds of the issue that the bonds should be held by the trustees until maturity. I know of no authority for cancellation prior to maturity of county bonds which have been issued and sold.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SHERIFF—IN RE PAYMENT OF REWARDS

September 2, 1932.

Dear Sir:

This refers to your favor of September 1st, requesting my opinion on two questions.

First, whether or not a Sheriff of Dade County, Florida, can legally accept from the Board of County Commissioners of Dade County rewards from time to time under Chapter 8658. Chapter 8658 of the Laws of Florida, Acts of 1921, Section 1 thereof, is as follows:

"Section 1. A reward of \$25.00 shall be paid to any person causing the arrest and conviction of any person or persons violating the prohibition laws of the State of Florida in Dade County."

Section 2 of the Act then provides that this reward shall be paid out of the Fine and Forfeiture Fund of Dade County.

It will be seen that this is a special Act and applies only to the County of Dade. The Act states that the reward shall be paid to *any person*, without stating whether this reward is payable to an officer whose duty it is to perform the same service for which the reward is offered.

The general law, supported by numerous decisions of the Supreme Court of various states is to the effect that a promise by a private individual to reward a public officer for doing what it is his duty to do is not only void for want of consideration, but also because it is *contrary to public policy*. See 54 Corpus Juris, page 786. These courts hold that it is not only against public policy, but that it is illegal for a sheriff or a deputy or constable or a jailer or a policeman or peace officer, or other official to accept a reward for the performance of service when the services are within the scope or line of his official duty and his compensation therefor is fixed by law.

The case before us here, however, is that of a statutory reward, and I find the general law to be that some of the cases make a distinction between the right of an officer to take a reward from a private individual for the performance of his official duty and his right to such a reward when offered by statute holding that in the latter case he is entitled to take the reward where the statute is sufficiently liberal to comprehend the services of the officer, but other authorities hold that unless expressly provided in the statute an officer is not entitled even to a statutory reward.

It seems clear that the general policy of the law is against officers accepting rewards for the performance of official duties, and that unless the statute is clear on the subject that they are not only not entitled to accept them, but that they are illegal. This matter came before the Supreme Court of the United States in the case of the United States vs. Matthews, reported in 173 U. S. page 381, the facts underlying which arose in the State of Florida and grew out of the question as to whether or not a United States Marshal was entitled to a reward under the Federal statute which conferred the power on the Attorney General of the United States to make the offer. Both the statute and the action of the Attorney General did not limit the reward to any particular person or class of persons, and did not exclude officers, as did also the Special Act of Dade County now under consideration. In the case last above referred to the court used the following language:

"The broad difference between the right of an officer to take from a private individual a reward or compensation for the performance of his official duties, and the capacity of such officer to receive a reward expressly authorized by competent legislative authority and sanctioned by the executive officer to whom the legislative power has delegated ample discretion to offer the reward is too obvious to require anything but stigma."

This holding of the Supreme Court of the United States would seem to settle the matter and permit the sheriff or his deputies to claim the re-

ward under the Special Act, to-wit: Chapter 8658, if Chapter 8658 is not in violation of Section 20 of Article III of the State Constitution, which prohibits the passing of any special or local laws regulating the fees of officers of the State and counties.

I note that you state the Sheriff has not reported these rewards as a part of the fees of his office. This would indicate that the Sheriff did not treat or consider these rewards as a part of his fees. On the other hand you state that the Sheriff collects these rewards in case of conviction, whether the service was performed by himself or some deputy, which would indicate that in fact the rewards were handled and treated to that extent by the Sheriff as one of the emoluments of office.

The clear policy of the law is very strong against an official accepting a reward for the performance of duties which he as an officer under the law should perform. The Legislature, however, evidently with a view of endeavoring to suppress violations of the prohibition law has seen fit to offer rewards to all persons causing arrests and conviction of the violation of the prohibition law, and the Legislature must have had in mind at the time that officials such as sheriffs, deputy sheriffs and other peace officers would come within this general classification, and in harmony with the decision of the Supreme Court of the United States above referred to, I am forced to the opinion that the Sheriff or any of his deputies who actually cause the arrest and conviction of any person violating the prohibition law is, under Chapter 8658, entitled to his reward. I do not think, however, that the Sheriff has a right because he is Sheriff to collect the reward for any arrest and conviction brought about by a deputy. It would seem to me that under the Act the person causing the arrest and conviction is the person entitled to the reward. It is my opinion that under the law the Legislature was not attempting to fix an additional fee for any officer, and while it does probably increase the emoluments of the Sheriff's office, because the Sheriff and his deputies are probably better equipped because of their official standing and official status to make these arrests and bring about conviction, yet, it evidently was the purpose of the Legislature to authorize the County Commissioners in the furtherance of the general welfare of their county to expend this extra money in the suppression of an outstanding and aggravating form of crime.

Second. The further question which you propound and upon which you request my opinion is, whether or not the Sheriff's office should be allowed credit for items charged as expenditures for the operation of the office alleged to be paid to *under-cover men*. I am unable to find any law authorizing such an expenditure. Sections 4579 and 4580 of the Compiled General Laws authorize the appointment of deputy sheriffs and surround their appointment with certain safeguards, such as filing bonds and filing with the Clerk of the Circuit Court the name and address of such deputy sheriffs, etc., but I find nothing that authorizes the use of what might be

termed under-cover men. The Sheriff, of course, is authorized under the law to call upon by-standers to assist in quelling riots and any breach of peace, but other than this, I find no authority for the payment of such items as suggested by you.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

STATE CANAL COMMISSION
MRS. FLORENCE R. S. PHILLIPS, SEC'Y
VALIDITY OF S. B. 131—CHAPTER 14724

August 19, 1931.

My Dear Madam:

This refers to your favor of August 15th, in which you ask the question as to whether or not the following words:

"Being Section 6241 of the Compiled General Laws of 1927"
used in the title of Senate Bill No. 131 invalidates the Act.

It is my opinion that this clearly does not invalidate the Act. The point you have in mind no doubt is that it is not sufficient for a Bill to refer to any section of the Compiled General Laws without also referring to it as a part of the Acts of Florida or by the section number of the Revised General Statutes of Florida.

When the title in any Act refers either to the specific chapter of the laws of Florida, or to a specific section of the Revised General Statutes, and refers to the same as being of a certain section of the Compiled General Laws, this in no way affects the validity of the Act. It is simply a matter of further item of identification. The reason that it is not sufficient to refer to the Compiled General Laws of 1927, without connecting it up further with the Acts, or with the Revised General Statutes, is that the Compiled General Laws of Florida have never been properly and legally adopted as the laws of Florida.

Very respectfully,

CARY D. LANDIS,
Attorney General.

STATE SEAL—FLORIDA STATE CANAL COMMISSION MAY USE
ON LETTERHEADS

March 2, 1931.

My Dear Madam:

This is in answer to your letter of February 24th regarding the right of the Florida State Canal Commission to use the State Seal on its letterheads.

I find no legal objection to your doing so. Several years ago an attempt was made to pass a law to prohibit the use of the State Seal in con-

nection with any letterhead except those of the departments of the State Government, such as Governor, Secretary of State, and the like. But the law did not pass.

It is therefore permissible for your Commission to use it on your letterhead if you wish to do so.

Regarding your proposed bill, I shall be glad to look it over and give you the benefit of any advice that I may be able to give.

Yours very truly,

FRED H. DAVIS,
Attorney General.

STATE BOARD OF ACCOUNTANCY

ACCOUNTANCY LAW—CONSTRUCTION

May 23, 1932.

Dear Sir:

Replying to your favor of the 17th instant, in which you request my interpretation of several sections of the Accountancy Law of this State, permit me to say first that inasmuch as the certified public accountants of the State sponsored the Act creating the State Board of Accountancy, it seems to me that the members of the Board should know better than anyone else the construction they wish to be placed upon the provisions of the statute.

With reference to your first question, in which you ask to be advised whether or not certified public accountants practicing under a firm name should be held to be practicing under an assumed name contrary to the statute, permit me to say it is my opinion that the statute should not be so construed. I think the provision prohibiting an accountant from practicing under an assumed name was intended to prevent an accountant from practicing under the name of another person.

In reply to your second question, relative to the firm of J. M. Jordan & Co., permit me to say the statute requires that to be eligible to practice under a firm name, all members of the firm shall be certified public accountants. Therefore, if Mr. Jordan is a certified public accountant, all the members of the firm, in this case only one, would be certified public accountants as required by law. However, if Mr. Jordan intends to continue alone, it seems to me that to come within the strict letter of the statute, he should not practice as a company. It may be that at the time Mr. Jordan adopted a firm name, there were other members of the firm, or it may be that he intends to take in other members. As to this question, I do not know just what the courts might hold in a test case.

Relative to the provision of the statute placing the responsibility of the administration of the Act upon the Board, permit me to say a prosecution for violation of the statute, the penalty being as for a misdemeanor, could

be brought by having a member of the Board appear before the proper prosecuting officer of the county and make a charge against the person for such violation.

Replying to your sixth question, in which you state that the Board desires to know the meaning of the words, "the contracts for which were entered into beyond the limits of the State of Florida," permit me to say I construe this provision to mean that accountants, in states other than Florida, having contracts with clients in the State of Florida, should be permitted by the Board to have a temporary certificate for ninety days so that such person may perform the contract. It seems to me that inasmuch as Section 12 provides that the Board may in its discretion adopt rules and regulations providing for the issuance of temporary certificates to persons for the purpose of enabling them to fulfill specific engagements or employments which were contracted for beyond the limits of the State of Florida, the question of what would be considered a contract entered into beyond the limits of the State of Florida would depend upon a construction of the rules and regulations which may have, in the discretion of the Board, been heretofore or may hereafter be adopted.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CHAIRMAN—BOARD AUTHORIZED TO ELECT

December 8, 1931.

Dear Sir:

Replying to your favor of the 4th instant, in which you state that the law governing the Board of Accountancy provides that the Board shall annually elect one of its members to be Chairman, which was done in a meeting held September 12th, but that you wish to hold another election in December, 1931, permit me to say:

It is my opinion that your Board is authorized under the law to elect a chairman as often as there is a vacancy in that office, but that the Board must elect a chairman at least once annually.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE BOARD OF ACCOUNTANCY—AUTHORIZED TO RETAIN COUNSEL

June 2, 1932.

Dear Sir:

This refers to your favor of June 6, relative to Chapter 15637, Laws of Florida, Acts of 1931, and especially with reference to Section 237 thereof.

It is my opinion that under Section 23, the State Board of Account-

ancy would have the right and authority, if and when in its judgment it deemed it necessary, to retain counsel to render legal advice and to handle such legal matters as would be for the benefit and protection of the interest of the Board in the performance of its duties as set forth in this chapter.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ACCOUNTANCY ACT—1931 REPEALS FORMER ACT

October 29, 1932.

Dear Sir:

Replying to yours of the 25th instant, permit me to say it is my opinion that inasmuch as Chapter 15637, Laws of Florida, Acts of 1931, is designed to cover the entire field of operation of the State Board of Accountancy, it supersedes and by implication repeals the 1927 Act, known as Chapter 12290, Laws of Florida, Acts of 1927, and that your Board must be confined to the provisions of the 1931 Act.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE BOARD OF BARBER EXAMINERS

BARBER EXAMINERS—WHEN MEMBERS ENTITLED TO COMPENSATION

August 26, 1931.

Dear Sir:

Replying to your favor of the 24th instant in which you ask to be advised whether or not under Section 23 of Senate Bill 124, creating a Board of Barber Examiners, the members of the Board are authorized to act as inspectors and receive a compensation provided by Section 21 of the Act, permit me to say:

It is my opinion that the law authorizes the members of the Board to either act as inspectors themselves or to employ inspectors. It is my opinion that any member of the Board performing any duty required of him under the direction of the Board is entitled to the compensation provided for in Section 21 of said Act.

Trusting you will find this to be satisfactory, and with best wishes, I am,

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE BOARD OF CONTROL

HON. J. T. DIAMOND, SEC'Y

FLORIDA STATE COLLEGE FOR WOMEN—WHEN BOARD
VESTED WITH AUTHORITY TO ADMIT
CERTAIN STUDENTS

May 22, 1931.

Dear Sir:

In your letter of the 20th instant, you state that the Board of Control requests my opinion regarding its authority to admit to the dormitories at the Florida State College for Women the daughter of a person who is a British subject, although he has resided in Florida for the past four or five years.

There is no provision of law specially covering this question. Section 768 of the Compiled General Laws of Florida authorizes the admission of students from other states to the University or College with the consent and upon the certificate of the Board of Control, upon such terms as to tuition, board, etc., as the Board may from time to time establish. There is no specific reference, however, to students from foreign countries, but I think it is a matter within the discretion of the Board to admit such students upon such reasonable rules, regulations and conditions as in their judgment and discretion they see fit to impose.

It is also provided in Section 768, Compiled General Laws, that the Departments of said College and University shall be open to applicants for admission, who are citizens of this State, at the lowest rate and expense consistent with the welfare and efficiency of said institutions, and as may be established from time to time by the Board.

Reading the entire Act together, it appears to have been the legislative intent to give preference to citizens of Florida in the admission to all Departments of the College and University, and this may include rooms in the dormitories.

It is my opinion, therefore, that the Board is vested with discretion and authority to promulgate reasonable rules and regulations for the admission of students from other states and foreign countries, so long as and to the extent that applicants who are citizens of Florida are given preference in admission. That is to say: If the admission of students from other states or nations interferes with the admission of citizens of Florida in the several Departments, including the dormitories, then such students from other states or nations should not be admitted until applicants who are citizens of Florida are first taken care of.

On the other hand, if there are available accommodations for outside students, after taking care of applicants who are resident in Florida, it would be within the discretion of the Board to admit such students to the dormitories.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FORD TRUCK—BOARD AUTHORIZED TO BUY

June 26, 1931.

Dear Sir:

This refers to your favor of the 26th instant, requesting my opinion as to authority of the Board of Control to purchase a Ford truck to be used by the Experiment Station and to be paid for from funds appropriated by the State for operating expenses of the Main Experiment Station.

It is my opinion, if this truck will be used solely by the Experiment Station, that the Board has the authority to purchase such a truck.

This opinion is in line with opinion heretofore rendered by this office under date of December 31, 1929, to the Governor.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

MOTOR VEHICLES—GOVERNMENTAL AGENCY NOT LIABLE
FOR NEGLIGENT OPERATION. DRIVER MAY
BE HELD LIABLE

July 15, 1932.

Dear Sir:

I acknowledge receipt of your letter of the 15th instant, stating that the Board of Control desires to know if it is liable under the law for damages resulting from the negligent operation of motor vehicles belonging to and operated by the institutions under its management.

It is well established as the law of this State that the State and its governmental agencies may not be sued for actions *ex delicto*. It is only in matters arising out of contract that the State may be sued, and then only when thereunto authorized by general law.

The Board of Control is a mere governmental agency through which certain functions and powers of the State are exercised, and has the same immunity from actions arising out of tort as the State itself. See *Keggin vs. Hillsborough County*, 71 Fla. 356, 71 So. 372; *Owen vs. Baggett*, 77 Fla. 582, 81 So. 888.

This immunity, however, does not protect the driver of an automobile in the employment of the institutions under the management of the Board of Control, and such operator may be held liable for his acts of negligence in the operation of such vehicles.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RADIO STATION WRUF—WHEN REQUIRED TO PAY FOR USE OF
CERTAIN COMPOSITIONS

July 22, 1932.

Dear Sir:

I am in receipt of your letter of July 14 relative to the position of Radio Station WRUF at the University of Florida with reference to the American Society of Composers, Authors and Publishers. Your inquiry is whether the station should pay for use of compositions by said society.

In reply, I beg to say that in my opinion the station, under the provisions of the Federal copyright acts, Sections 1 and 28 of Title 17, U. S. C. A., is not required to pay for use of such compositions in the regular programs for which the station receives no pay, but that the station, when using such compositions in programs for pay, is required to pay for such use.

Very truly yours,

CARY D. LANDIS,
Attorney General.FEDERAL REVENUE ACT—UNIVERSITY OF FLORIDA ATH-
LETIC ASSOCIATION NOT EXEMPT

September 29, 1932.

Dear Sir:

I have your letter of the 24th instant, enclosing letter from the Honorable John J. Tigert, President of the University of Florida, requesting an opinion as to the necessity for the University of Florida to pay the Federal tax of ten percent on admissions to athletic contests imposed by the Federal Revenue Act of 1931.

It is my opinion that if these contests were put on by the University itself, and the proceeds or a part thereof went to the University and contributed to its support, the tax could not be constitutionally required to be collected and paid by it. Your letter states, however, that such athletic contests as are held in connection with the activities of the University are conducted by the University of Florida Athletic Association, Incorporated, and you have advised me that the funds derived from such contests go into the hands of said University of Florida Athletic Association and are by it expended and controlled exclusively without any supervision or control by the University of Florida and—or the Board of Control of Florida. You also advise that no part of these funds contribute to the operation of the University of Florida or ever become the property of the University or of the State of Florida for the support of the University except incidentally that part of the funds which are applied toward the payment of the stadium erected by the University of Florida Athletic Association, Incorporated, which ultimately is to become the property of the University by contract between the University and said Athletic Association.

Under this statement of facts, it is questionable in my opinion as to whether an exemption could be claimed and sustained under the Constitution against the Federal Government taxing the State Government, and its lawfully constituted agencies in the performance of governmental functions.

Yours very truly,

CARY D. LANDIS,
Attorney General.

UNIVERSITY OF FLORIDA—APPLICATION OF LAW IN RE TUI-
TION OF CERTAIN STUDENTS

December 6, 1932.

Dear Sir:

Replying to yours of the 5th instant, in which you state three students at the University of Florida, who entered the College from other states, have applied to the Board of Control for exemption from non-resident tuition fee of \$100.00 per year and that the students referred to have Circuit Court decrees removing disabilities of non-age, and in which you state the Board of Control instructed you to refer the matter to this office for an opinion, permit me to say Section 768, Compiled General Laws, read as follows:

"In case of the admission of students to either the said University or College from other states, the same may be admitted by and with the consent and upon the certificate of the Board of Control upon such terms as to tuition, board, etc., as the said Board may from time to time establish."

In view of the provisions of the Section quoted above, it is my opinion that the Board of Control does have the authority to require students from other states, who are admitted to the University or College as non-residents, to remain under that classification as long as they remain students of either of the colleges regardless of whether or not the students have their minority removed by court decree, and regardless of whether or not such students have declared themselves citizens of this State. Having entered the College as non-resident students such students remain subject to the rules and regulations of the College so long as they continue as students there. On the other hand, if the Board of Control should deem it advisable, I think the Board would have the authority to grant the exemption to a student who entered from another State and who has had his minority removed by court decree and has bona fide declared himself to be a citizen of the State of Florida. It is my opinion that this is a matter to be governed entirely by such rules and regulations as may be adopted and promulgated by the Board of Control pursuant to the authority of the Section above quoted. Of course, if a student from another State who has resided in the State of Florida for one year and the county for six months and has had his minority removed by court decree, or by attaining the age

of 21 years, declares himself to be a permanent resident of the State of Florida, should see fit to test the matter in a court of competent jurisdiction to have his rights in the premises adjudicated, such court might hold that he is entitled to the same exemptions accorded students who enter the College as residents of this State. However, if the Board of Control thinks it to be to the best interest of the College to do so it can leave the burden upon non-resident students who claim to be citizens of the State to establish their claim and compel the College to grant them the exemption by an order from a court of competent jurisdiction.

Very truly yours,

CARY D. LANDIS,
Attorney General.

STATE BOARD OF ENGINEERING EXAMINERS

HON. C. S. HAMMATT, PRESIDENT

LICENSE—AUTHORITY TO REVOKE

January 27, 1932.

Dear Sir:

Replying to your favor of the 22nd instant, permit me to say it is my opinion that, under Section 22284, Revised General Statutes (Sec. 3630, C. G. L.), your Board is authorized to revoke the certificate of registration of an engineer registered by said Board where such engineer either pleads guilty to a crime or is convicted by a jury and sentenced by the court. However, the statute prescribes a definite procedure to be followed by the Board before revoking a license and the procedure prescribed by the statute should be carefully followed, otherwise the action of the Board in revoking a license could be, and probably would be, declared invalid by a court if later contested.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE BOARD OF EXAMINERS IN OPTOMETRY

HON. W. F. DAVEY, SEC'Y

OPTOMETRY—LIMITED EXAMINATION AUTHORIZED

May 21, 1931.

Dear Doctor:

Replying to yours of the 16th instant, in which you ask my opinion relative to the power of your Board under Section 5 of Chapter 8580, Laws of Florida, as printed in your pamphlet, to grant a limited examination to

one who has practiced optometry for the past twenty-four years, permit me to say that we find no provision in the Section cited which would prohibit the Board from giving this examination.

Trusting you will find this to be satisfactory, and with best wishes, I am,

Yours very truly,

CARY D. LANDIS,
Attorney General.

OPTOMETRY—STATE SHOULD PROSECUTE FOR VIOLATIONS
OF ACT

December 4, 1931.

Dear Doctor:

Replying to your favor of the 18th ultimo, permit me to say:

I think if you should strike the first two lines from the letter you propose to send out to parties who have been in the habit heretofore of dealing in spectacles, eyglasses, and lenses, that there would be nothing objectionable from a legal standpoint about it.

We note that the first two lines of your letter are such that it is the duty of your Board to enforce the statute. In this you are in error. It is the duty of the prosecuting officers of the State to prosecute anyone charged with violating the provisions of the statute.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORPORATION—OPTOMETRIST MAY BE EMPLOYED

July 15, 1932.

Dear Doctor:

Replying to your favor of the 11th instant, permit me to say it is my opinion that under Chapter 14778, Acts of 1931, a licensed optometrist may be employed by a corporation, and that such corporation may advertise that they have a licensed optometrist in charge of a department of their business. The statute appears to contemplate such practice.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE BOARD OF HEALTH

DR. H. MASON SMITH, PRESIDENT

HON. HENRY HANSON, STATE HEALTH OFFICER

DEATH CERTIFICATES—WHO AUTHORIZED TO SIGN

July 7, 1931.

Dear Doctor:

Replying to your favor of the 29th ultimo in which you state that you would appreciate an opinion from this office on the question of whether or not anyone other than a physician or M. D. are qualified to sign death certificates, permit me to say by reference to Sections 3275, 3276 and 3277, Compiled General Laws of 1927, it appears that it is not necessary that the death certificate be signed by a physician or M. D. unless there was a physician in attendance on the deceased at the time of death.

Section 3277 provides the course to be pursued by the Registrar where no physician was in attendance at the time of death.

Section 3275 provides that the certificate of death shall be on the standard form approved by the United States Bureau of the Census, and that the personal and statistical particulars shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts.

In view of the three sections cited, it is my opinion that the local Registrar should be instructed that in cases where no physician was in attendance at the time of death that they should not under the provisions of Section 3277, Compiled General Laws of 1927.

Trusting you will find this to be satisfactory, and with best wishes, I am,

Yours very truly,

CARY D. LANDIS,
Attorney General.

DEATH CERTIFICATE—IF CERTAIN DOCTORS AUTHORIZED TO SIGN

July 10, 1931.

Dear Doctor:

Replying to your favor of the 8th instant in which you request an opinion from this office on the specific question of whether or not osteopaths, chiropractors, naturopaths and pediatricists should be construed to be physicians under the terms of the statute requiring that the physician should sign the medical certificate of a deceased person, permit me to say:

Baldwin's Century Edition of Bouvier's Law Dictionary, which is the best and latest law dictionary, defines a physician to be "a person who has received the degree of Doctor of Medicine from an incorporated institution."

It is my opinion, therefore, that the reference to "the physician" in Section 3276, Compiled General Laws, means a "Doctor of Medicine" who has received a degree from an accredited medical college.

As a matter of policy it might be well to permit the osteopaths, chiropractors, naturopaths and pediatricists to sign the medical certificate jointly with the health officer, registrar or other person authorized by law to sign it.

Trusting you will find this to be satisfactory, and with best wishes, I am,

Yours very truly,

CARY D. LANDIS,
Attorney General.

PREGNANCY—CERTAIN ACTS CONSTITUTE A CRIME

September 3, 1931.

Dear Doctor:

Replying to your favor of the 1st instant in which you ask to be advised whether or not there is a law of this State prohibiting the giving of correct scientific information through the mails or by a physician in regular practice, on the subject of contraceptive measures, or any information regarding the prevention of pregnancy, permit me to say:

We fail to find a Florida statute expressly covering this subject. However, Section 334, Title 18, U. S. C. A., makes it a crime to use the mails to send out literature, letters or any other printed matter, or any article, thing, drug, or medicine calculated to lead another to use or apply the same for preventing conception.

Trusting you will find this to be satisfactory, and with best wishes, I am,

Yours very truly,

CARY D. LANDIS,
Attorney General.

STORES—CERTAIN DISPLAY SIGNS UNLAWFUL

December 19, 1931.

Dear Doctor:

Replying to yours of the 17th instant, in which you ask to be advised regarding the question of whether or not the use of the words, "Drug Sundries," "Drugless Drug Stores," or in other combinations, permissible when displayed by stores, where no registered pharmacist is in charge, permit me to say that it is my opinion that under the provisions of Chapter 13757, Acts of 1929, the displaying of such signs is illegal unless there is employed in such store a registered pharmacist.

I am enclosing herewith copy of a letter addressed to Hon. W. D. Wilson, County Attorney, Titusville, Florida, correcting an opinion expressed to him under date of December 16th, copy of which was mailed to you. The opinion to Mr. Wilson, under that date, was based on the Compiled General Laws of 1927, without knowledge that Section 3529 had been amended by the Legislature of 1929.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY SCHOOL FUNDS—NOT AUTHORIZED TO BE USED FOR
ADMINISTRATIVE OR SUPERVISORY WORK

September 26, 1931.

Dear Sir:

Replying to your favor of the 24th instant, in which you ask to be advised whether or not any of the State appropriation for the county school funds could be used for administrative or supervisory work in the State Department of Public Instruction, on the theory that this is essential for its proper expenditure by the counties, permit me to say:

The Legislature made an appropriation known as the State County School Fund, in the amount of \$7,500,000. This money under the law is to be apportioned to the different counties for county school purposes. The Legislature also made an appropriation to cover the operating expenses of the State Department of Public Instruction.

No funds could be expended by the State Department, unless the Legislature had made a specific appropriation therefor.

It is my opinion that none of the State County School Fund could be used for administrative or supervisory work in the State Department of Public Instruction.

Trusting you will find this to be satisfactory, and with best wishes, I am,

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE CONVICTS—NOT AVAILABLE FOR DRAINAGE PROJECTS

November 9, 1931.

Dear Doctor:

Replying to your favor of the 2nd instant, permit me to say:

Section 8612, Compiled General Laws of 1927, provides that all State convicts not retained at the State Prison shall be delivered to the State Road Department for work on roads, and are therefore not available on drainage projects for malaria control.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

APPROPRIATION—CONSTRUCTION OF LAW

November 9, 1931.

Dear Doctor:

This refers to your favor of November 6th, and in reply I beg to advise that Section 3172 of the Compiled General Laws, 1927, provides for a continuing levy for a quarter of one mill to create a special fund for the State Board of Health. The total amount, or in other words, the maximum amount that can be expended under the General Appropriation law is \$272,920.00. The General Appropriation bill provides that the items set forth therein are payable out of the General Revenue Fund of the State. Now, the situation is as follows from a legal standpoint.

Your Department can expend in accordance with Section 3172, above mentioned, whatever is produced by this levy, whether it is more or less than the maximum limited in the General Appropriation bill. In other words, the General Appropriation bill cannot repeal or modify a separate Act of the Legislature, such as Section 3172. If the quarter mill levy does not produce sufficient money as to equal the maximum amount authorized by the General Appropriation bill, it is my opinion, that the amount produced by the quarter mill levy could be supplemented from the General Revenue Fund up to an amount equal to the maximum limitation set in the General Appropriation bill, however, you will be confronted with this situation after you have exhausted the quarter mill levy. The question arises as to whether or not there will be sufficient funds in the General Revenue fund to supplement the quarter mill tax levy, and if there is not, then of course you would be confined to the amount of money produced by the quarter mill levy.

Trusting that I have made myself clear upon the points with reference to which you are seeking information, I beg to be,

Very respectfully,

CARY D. LANDIS,
Attorney General.

STATE REGISTRAR VITAL STATISTICS—FEES—DISPOSITION

January 28, 1932.

Dear Doctor:

Replying to your favor of the 25th instant, permit me to say Section 3291, Compiled General Laws, authorizes the State Registrar of Vital Statistics to charge a fee of 50 cents for the issuance of certified copies of birth and death records. This Section also requires the State Registrar to keep a true and correct account of all fees by him received under the provisions of said Section, and turn the same over to the State Treasurer.

Where a statute authorizes the collection of fees and provides that such fees shall be turned over to the State Treasurer, and does not expressly

name the fund to which said fees shall be credited, such fees are required to be credited to the General Revenue Fund of the State.

Section 3299, Compiled General Laws, provides that the Bureau of Vital Statistics shall furnish certified copies of marriage license, charging therefor a fee of 50 cents. And Section 3301, Compiled General Laws, requires the Bureau of Vital Statistics each month to transmit such fees to the State Treasurer, and requires the State Treasurer to place said fees in the State Board of Health Fund for the use of the Bureau of Vital Statistics.

So you will see that in the case of fees received for certified copies of marriage license, the statute expressly provides that the fees be credited to the State Board of Health, while the statute providing for fees for searches of birth or death certificates does not name any particular fund, and therefore these fees must be credited to the General Revenue Fund of the State.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RECORDS, STATE FINANCIAL—NO AUTHORITY FOR
DESTRUCTION

April 1, 1932.

Dear Doctor:

This refers to your favor of March 31st relative to the destruction of old State financial records.

I know of no statute or law which would authorize the destruction of any such records. All State public records are supposed to be kept intact, and unless and until the Legislature should see fit to enact some law by which they can be destroyed, I am of the opinion that they should be carefully preserved.

Yours very truly,

CARY D. LANDIS,
Attorney General.

JAILS AND PRISON CAMPS—RULES AND REGULATIONS IN RE
SANITATION AND DISINFECTION AUTHORIZED
TO BE MADE

July 1, 1932.

Dear Doctor:

This refers to your favor of June 28th, relative to complaints made to your department from county prisons and prison camps.

I assume that you have a set of the Compiled General Laws at your command. I refer you to Section 3160 of the Compiled General Laws, which provides among other things as follows:

"The State Board of Health shall have the power to make, adopt, promulgate and enforce rules and regulations from time to time re-

quiring and providing for the thorough sanitation and disinfection * * * of all convict camps, penitentiaries, jails, factories, etc. * * * to supervise and regulate municipal and county sanitation and to make separate orders to meet any emergency not provided for by general rules and regulations for the purpose of suppressing nuisances and communicable, contagious and infectious diseases and other dangers to the public life and health * * *."

Section 8549 of the Compiled General Laws in treating of the working of county convicts among other things says:

"Said county convicts shall be kept and worked under such rules and regulations and supervisions as may be prescribed by the Commissioner of Agriculture, with the advice and approval of the Board of Commissioners of State Institutions, and the Commissioner of Agriculture, with the approval of the Board of Commissioners of State Institutions, shall have the power to enforce all such rules and regulations, etc. * * *. It shall be the duty of the Supervisors of State convicts to inspect and supervise all county convict camps under the direction of the Commissioner of Agriculture. Said Supervisors shall make written reports to the Commissioner of Agriculture and shall send duplicate copies of said reports to the County Commissioners of the county in which said convicts so inspected were sentenced, which reports shall at all times be open to public inspection.

"It shall be the duty of the Boards of County Commissioners when working county convicts on the public works of the counties to provide or cause to be provided, substantial food, clothes, shoes, *medical attention*, etc., for said convicts as are required for State convicts in the State * * *."

Sections 8606 and 8607 of the Compiled General Laws provides for the State convict inspectors and their rights and duties.

It seems to me that under Section 3160, above referred to, your department unquestionably has the power and authority to adopt and promulgate rules and regulations incident to sanitation and disinfection of jails and convict camps, and to make such general rules and regulations as your department deems necessary for the purpose of preventing or caring for cases where there are communicable, contagious and infectious diseases, and other dangers to the public life and health.

Under these statutes, as I understand it, the law authorizes and directs the convict inspectors to inspect the various jails and camps, and to make a report to the Commissioner of Agriculture, and if it is not satisfactory, the Commissioner of Agriculture handles the matter through the County Commissioners of the different counties, or the Board of Commissioners of State Institutions, and seeks to have matters remedied, if a necessity for such appears, and if the officials fail to do this, a report is made to the Governor, who in turn handles the matter with the officials with a view of

correcting any error, derelictions of duty or any power conferred upon the various officials.

I discussed the matter with Mr. Mayo, Commissioner of Agriculture, and he advised me that he would welcome any assistance which your department might give him at any time, and that he in the exercise of powers conferred upon him by law will gladly co-operate with you and your department in an effort to bring about the best possible condition in all of the jails, camps, etc.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DRUG STORE, PHARMACY—REGISTRATION FEE

July 20, 1932.

Dear Doctor:

Replying to your favor of the 15th instant, permit me to say it is my opinion that Chapter 11859, Acts of 1927, does not contemplate the payment of more than one annual registration fee by a drug store or pharmacy.

The registration year for drug stores and pharmacies runs from the first Monday in July of any year until the first Monday in July of the next year. Therefore, all pharmacies or drug stores which were doing business on the first Monday in July of this year should have registered and paid the registration fee of \$10, and no other registration fee should be required until the first Monday in July of next year.

Where a drug store opens for business at any time after the first Monday in July of any year, whether it be in August of that year or January of the following year, the registration fee paid at the time of opening would expire on the first Monday in July thereafter. The statute apparently does not make any provision for a registration fee for less than one year, regardless of when the drug store may have opened for business.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE BOARD OF MEDICAL EXAMINERS

HON. W. M. ROWLETT, SEC'Y-TREAS.

OSTEOPATHIC DOCTORS—RIGHT TO USE TITLE M. D.

January 19, 1931.

Dear Sir:

I am forced to advise in response to your letter of January 7th on the above subject, that under the present statutes of Florida there is nothing to prohibit a physician licensed as an osteopathic from using the title "M. D." after his signature on prescriptions.

For example, Section 3429, Compiled General Laws, expressly provides:

"Osteopathic physicians and surgeons licensed hereunder shall have the same rights as physicians and surgeons of other schools of medicine with respect to the treatment of cases or holding of offices in public institutions."

Section 3426 reads as follows:

"Each applicant who successfully passed the examination shall be entitled to a license, which carries with it the title Dr. and physician, with rights as defined in Section 3423."

Section 3423 provides:

"Physicians and surgeons of the osteopathic school of medicine are to be of equal rank and grade as the physicians and surgeons of the other three schools of medicine, designated as allopathic, homeopathic and eclectic, to have all rights except to use drugs not taught in the standard colleges or schools of osteopathy; provided, however, that no osteopathic physicians licensed under this Chapter shall practice major surgery who has not had a four year course in an accredited osteopathic school or college or the equivalent thereof."

As you will see by reading the Sections of the law to which I have referred, it has been made pretty plain by the present statute that osteopaths have been given just about all the rights that are given to ordinary M. D.'s.

Trusting that this opinion will be of service to you, and returning herewith the communication enclosed with your letter, I am,

Yours very truly,

FRED H. DAVIS,
Attorney General.

STATE BOARD OF PUBLIC WELFARE

MISS HELEN C. MAWER, COM'R

RECONSTRUCTION FINANCE CORPORATION—PERSONS ACTING FOR FREE FROM LIABILITY

September 21, 1932.

Dear Miss Mawer:

This refers to your favor of September 19 requesting an opinion from this office as to liability of persons acting under the direction of the State and Federal Government through the Reconstruction Finance Corporation set-up in the event some person should be injured.

In my opinion there is no liability on anyone acting under the direction of the Governor or Federal officials in the carrying out of the work of the Reconstruction Finance Corporation. This is administrative work by the National and State governments, and, it is my opinion, that all persons, in carrying out this work, are free from liability for any accident or injury to anyone, if it is not done wilfully or maliciously.

Very truly yours,

CARY D. LANDIS,
Attorney General.

STATE BOARD OF NATUROPATHIC EXAMINERS

DR. W. T. PERRY, SEC'Y-TREAS.

NATUROPATHIC PHYSICIANS—WHEN AUTHORIZED TO ISSUE
HEALTH CERTIFICATES

January 18, 1932.

Dear Doctor:

Replying to your favor of the 14th instant, permit me to say paragraph 4, Section 12 of Chapter 14,650, Acts of 1931, reads as follows:

"All present practitioners, either barbers, apprentices or barber teachers, must furnish to the Board a certificate issued by a Practicing Medical Doctor of this State attesting that they are free from any contagious or infectious diseases before a license or permit to practice shall be issued to them."

In view of the language of the statute, above quoted, it is my opinion that a Naturopathic Physician not holding a degree of Doctor of Medicine would not be authorized to issue health certificates as provided for in the quoted Section of the Statute.

Yours very truly,

CARY D. LANDIS,
Attorney General.NATUROPATHIC PHYSICIAN—CONSTRUCTION OF LAW IN RE
RIGHT OF PRACTITIONERS OF PHYTO-THERAPY TO
PRESCRIBE AND GIVE BOTANICAL PREPARA-
TIONS AND THEIR COMPOUNDS

January 3, 1931.

My Dear Doctor:

This is in answer to your letter of December 15th asking my opinion as to whether a naturopathic physician would be legally within his rights in prescribing and giving botanical preparations and their compounds, and also asking my opinion as to whether or not naturopathic physicians have the right to legally sign death and health certificates and other papers required as evidence by insurance companies and others.

I will answer your several questions as follows:

1. Section 1 of Chapter 12286, Acts of 1927, includes the practice of phyto-therapy as being included within the practice of naturopathy. The question of whether or not a naturopathic physician would have the right to prescribe and give botanical preparations in his practice will depend entirely upon whether or not the designated term "phyto-therapy" embraces the practice of giving such botanical preparations and compounds.

In other words, the naturopathic physician has the legal right to practice phyto-therapy, and phyto-therapy in its proper definition as understood

among members of the medical profession includes the giving of botanical preparations and compounds, then the right of a naturopathic physician to practice phyto-therapy includes the right to do what phyto-therapy includes, namely, give and prescribe botanical preparations and compounds.

In cases like this, the courts resort to the customs and circumstances of the profession involved, in order to ascertain what is embraced within a technical term such as phyto-therapy.

2. While Section 12 of Chapter 12286, Acts of 1927, requires that doctors of naturopathy shall observe and be subject to all State, county and municipal regulations in regard to the control of contagious and infectious diseases, the reporting of births and deaths, and any and all matters pertaining to the public health in the same manner as is required of other practitioners of the healing art, this Section does not of itself extend the right of practitioners of naturopathy to invade the field of other schools of medicine. The purpose of Section 12 was merely to require naturopathic doctors to report a birth or death which might occur within their observation as practitioners.

I find nothing in Chapter 12286, Acts of 1921, relating to naturopathic doctors, which authorizes such practitioners to undertake to prescribe for, diagnose, or treat contagious or infectious diseases. Consequently, since the signing of a health certificate concerning the existence or non-existence of a contagious or infectious disease by a doctor would necessarily embrace a diagnosis by such doctor of whether or not the disease existed, no doctor who is without authority of law to diagnose and treat a contagious or infectious disease has the right to sign a health certificate required by law to show the existence or non-existence of such disease.

With regard to the signing of death certificates the rule is this. Any person, whether a licensed doctor or a perfect stranger to the medical profession, who is treating or undertaking to treat a person who dies, is required by law to sign his death certificate concerning the death. The purpose of the death certificate law is to make a record of the fact of death and the apparent cause of it, and to have such record vouched for by the attending physician or other person presuming to act as such at the time the death occurs.

I see no reason why a naturopathic doctor is not just as competent to tell when a man is dead as any other doctor. Consequently, I think that such doctors would have the right to sign a death certificate under the State law requiring such certificates to be signed by attending physicians. However, where it is necessary to prove that death resulted from a particular cause or a particular disease, there is nothing in the statutes to compel an official or an insurance company to accept a certificate of any practitioner of any school except such as might have the approval of the company or official requiring the certificate to be furnished to its or his satisfaction.

Regretting that unavoidable circumstances delayed my answer to your inquiry, I am,

Yours very truly,

FRED H. DAVIS,
Attorney General.

LICENSE TO PRACTICE—BOARD TO DETERMINE IF APPLICANT
ENTITLED TO WITHOUT EXAMINATION

December 4, 1931.

Dear Doctor:

Replying to your favor of the 3rd instant, permit me to say the question of whether or not an applicant for a license to practice naturopathy is entitled to such license without examination is one to be determined by the Board upon proof submitted.

If a particular applicant feels that the Board has refused to grant him a license when it should have done so, the applicant may resort to a court of competent jurisdiction to compel the Board to grant him a license.

Yours very truly,

CARY D. LANDIS,
Attorney General.NATUROPATHIC EXAMINERS—BOARD MAY REVOKE LICENSE
FOR CERTAIN CAUSES

July 16, 1931.

Dear Doctor:

Replying to your favor of the 12th instant, in which you request a definite opinion from this office, relative to the powers of your Board to revoke the license of a person who has been admitted by your Board to the practice of Naturopathy, permit me to say that by reference to Chapter 3484 of the Compiled General Laws of 1927, we find that there are seven (7) causes for the violation of which your Board may revoke the license of a person who has been admitted to practice by your Board. We have carefully read the seven causes for which a practitioner's license may be revoked, and we do not find that the failure to pay registration renewal fee is among the grounds for revocation of license.

The fact that the statute sets out the grounds upon which the Board may revoke a license, in my opinion, limits the power of the Board to the seven grounds set out in the statute.

Trusting you will find this to be satisfactory, I am,

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE BOARD OF PILOT COMMISSIONERS

PILOT COMMISSIONERS—AUTHORITY TO PROMULGATE RULES
AND REGULATIONS

January 8, 1932.

Dear Sir:

In response to your verbal request of this date, this is to advise that I have read Section 3881, Compiled General Laws, the same being Chapter 3142, Acts of 1879, and I find that Section and Chapter contains sufficient authority to make all reasonable rules and regulations adopted and promulgated by the Board of Pilot Commissioners valid and enforceable, provided such rules and regulations adopted and promulgated by said Board are in conformity with law, and provided said rules and regulations do not conflict in any way with the rules and regulations of the State Board of Health now in force or that may hereafter be adopted by said State Board of Health.

Yours very truly,

CARY D. LANDIS,
Attorney General.STATE CHEMIST
HON. J. J. TAYLOR

STATE CHEMIST—IN RE DUTIES AND EXPENSES

May 9, 1931.

My Dear Doctor:

Replying to your favor of the 8th instant, I beg to give you my opinion on the subjects inquired about as follows:

First. It is my opinion that in certifying analyses completed at the State Laboratory during your absence to the Commissioner of Agriculture, that you may authorize the First Assistant Chemist to make such certification in your name by him as First Assistant Chemist.

Second. It is my opinion that you cannot draw upon State funds for your traveling expenses incident to division of services between the University and the State Chemist's office covering the expenses in going from Gainesville to Tallahassee and from Tallahassee to Gainesville. In other words, it is my opinion, that in going from one place to the other place to carry out the duties of your office you could not charge mileage or other expenses incident to this. The expenses for which you should be reimbursed are such expenses as are necessary in traveling from Gainesville to the different places in performing the functions incident to the office work at Gainesville, and then the same when you are performing the duties of your office here in Tallahassee.

Third. It is my opinion that it would not be legal for you to draw upon the Incidental Fund for extra stenographic services if needed by the State Chemist while at the State University. In other words, while performing your duties at the University, I take it that the regular stenographic force should take care of your needs, and the stenographic force here in Tallahassee should take care of your services while performing your duties here.

With kindest personal regards, believe me to be,

Yours very sincerely,

CARY D. LANDIS,
Attorney General.

FERTILIZER—APPLICATION OF STATUTE IN RE STANDARD,
METHOD OF DETERMINING

October 17, 1932.

Dear Mr. Taylor:

Section 3815 of the Compiled General Laws of Florida, 1927, makes a deficiency amounting to two-tenths of one percent, or more in one or more elements of available plant food either in quality or quantity in fertilizer or fertilizer materials purchased from any manufacturer or vendor thereof, actionable fraud for which the purchaser may recover twice the amount paid to or demanded by the manufacturer or vendor for such fertilizer or fertilizer materials so purchased.

The Legislature has fixed the standard and the method of determining the legal compliance therewith, and it is the duty of the State Chemist when required under the provisions of Section 3814 of the Compiled General Laws of Florida, to make and render a true report and finding of his analysis of commercial fertilizer or fertilizer materials submitted for that purpose.

In other words, the Legislature has relieved the State Chemist of the responsibility of fixing the standard as to what constitutes deficiency in fertilizer or fertilizer materials, both in quality and quantity.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE FORESTER
HON. HARRY LEE BAKER

APPROPRIATIONS—CONSTRUCTION OF LAW

January 4, 1932.

Dear Sir:

In response to your request for an opinion relative to the provision in Chapter 15719, Acts of 1931, limiting the expenditure of funds appropriated by said Chapter to lands in fire control districts to lands upon which taxes are not delinquent, permit me to say it is my opinion that the provision of limitation is a nullity for the following reason, to-wit:

Chapter 15719 by its title purports to appropriate funds for salaries of the officers of the State and for all the current operating expenses of the departments and branches of the State Government for two years from June 30, 1931.

Among the departments for which money was appropriated is the State Forestry Board, and there is nothing in the title of Chapter 15719 to indicate that the State Forestry Board would be restricted in the expenditure of funds appropriated to lands only upon which taxes have not become delinquent.

The appropriation bill enacted by the Legislature must relate to one subject only. Therefore, the proviso that the funds appropriated for the State Forestry Board should not be available for the protection from fire of any lands when the taxes on said lands are delinquent, is a proviso not within the terms of the title to said Chapter. It relates to the payment of taxes, is arbitrary and unreasonable, and if observed would defeat the purpose of the entire appropriation of the State Forestry Board, for it would be impractical to attempt to provide fire protection for scattered tracts of lands upon which taxes had been paid, and at the same time leave intermediate tracts of land upon which taxes had not been paid unprotected and a menace to the tracts under protection. Therefore, the proviso is for the reasons stated, void.

Yours very truly,

CARY D. LANDIS,
Attorney General.

GASOLINE TAX—STATE BOARD OF FORESTRY NOT EXEMPT

July 14, 1932.

Dear Sir:

I am in receipt of your favor of the 7th instant, making inquiry as to whether your Department is entitled to an exemption from the State and Federal gasoline taxes.

You state that the actual expenditure is by the State, but that you are reimbursed for most of the work by the Federal Government or landowners.

The duties of the Florida Board of Forestry as prescribed by Section 4151 (4), Compiled General Laws of 1927, are largely co-operative with individuals and corporations, as well as certain governmental departments. Since the duties performed are largely for the benefit of and in co-operation with private parties and companies, and you are reimbursed for most of the work done, I am of the opinion that you would not be exempt from the gasoline taxes mentioned.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE GAME COMMISSIONER

HON. C. C. WOODWARD

LICENSE TAX, FISHING AND HUNTING—CHILDREN EXEMPT

January 23, 1931.

Dear Sir:

In answer to your letter of January 20th I beg to advise that in my opinion children under 15 years of age, both resident and non-resident, are exempt from the payment of a license for hunting, fishing, and trapping, as required by Section 19 of Chapter 13644, Acts of 1929.

Trusting this answers your inquiry, I am,

Yours very truly,

FRED H. DAVIS,
Attorney General.

FISH DEALERS—LICENSE TAX REQUIRED

August 31st, 1931.

My Dear Sir:

This is in response to your favor of August 31st, requesting my opinion as to whether or not a fresh water fish dealer's license as provided for by Section 31 of Chapter 13644 is required for selling fresh water fish taken from a privately owned fish pond as defined in Section 23 of the same Act.

It is my opinion that Section 31 of the Act referred to requires all persons who engage in the business of wholesale or retail of fresh water fish dealer to take out a license to carry on such business. This is a license tax upon the business. The other Section that you refer to, to-wit: Section 23, does exclude the ownership of fish in privately owned and enclosed fish ponds from the title of the State and vests the title of such fish in private individuals, but this does not permit them to carry on the business of selling fish. The license tax imposed by Section 31 is required as a license tax on the business and has no reference to the ownership of the fish.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BREEDING GROUNDS—CONSTRUCTION OF STATUTE IN RE
GAME, NON-GAME BIRDS, AND FRESH WATER FISH

September 1st, 1931.

My Dear Sir:

This is in response to your request for my opinion as to the validity and differentiation between Section 4 and Section 7 of the State Game and Fish Law, which is Chapter 13644 of the Acts of 1929.

It is my opinion that Section 4 and Section 7 cover entirely different matters and have no inter-relation with each other. Section 4 covers the

matter of establishment of breeding grounds for game, non-game birds and fresh water fish, while Section 7 pertains to public shooting grounds in connection with refuges and breeding grounds. Further, it is my opinion that the Legislature was within its constitutional rights in the enactment of Section 4 as well as Section 7 of this Act. So far as I am advised the Courts have uniformly, both Federal and State, sustained the exercise of police power with reference to the protection of game and fish, so long as the measures are reasonable and uniform and do not violate any of the specific commands of the Constitution, of either the State or the Nation, and it is my opinion that neither of these Sections violates any of the organic provisions of the Constitution.

With reference to the further question of fencing, it is my opinion that Section 4 stands within itself and is lawfully enforceable, and that there is no need of the breeding grounds being fenced so far as this Section is concerned, but with reference to Section 7 relative to public shooting grounds, it is my opinion that the breeding grounds must be fenced with one wire, as is provided by that Section. I am clearly of the opinion that if you, together with the advice and consent of the Governor, close any grounds or establish any breeding grounds in accordance with Section 4, that such action is legal and that the Courts will enforce the same. The fact that there is no specific penalty in Section 4 is immaterial, as there is a general penalty clause in the Act, which is Section 70 of the Act and which covers this Section as well as other Sections of the Act.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

FISHING—CONSTRUCTION OF STATUTES

May 4, 1932.

Dear Sir:

Replying to your favor of the 30th ultimo, in which you request an opinion on certain statutes affecting your Department, permit me to say:

The Legislature of 1931 enacted Chapter 15121, which is an Act to provide a closed season on fishing in the Choctawhatchee River and certain other waters connected with or tributary to said river. The title to said Chapter makes no mention of a license to be collected from those fishing in such water, while the body of the Act provides that non-residents shall pay a license fee of \$10 in each county through which the waters of the river and/or its tributaries flow.

Where the provisions of an Act constitute a broader or an essentially different subject that is not properly connected with the stated subject of the Act, such provisions violate Section 16, Article III of the Constitution, and are inoperative. See *Williams vs. State*, 99 Fla. 496, 126 So. 117.

It is my opinion that the title to the Chapter above mentioned is deficient in that it makes no mention of a license to be imposed upon non-resident fishermen, and that, therefore, the provisions in the body of the Act, imposing a license upon such non-resident fishermen, violate Section 16 of Article III of the Constitution and are unenforceable.

The same session of the Legislature enacted Chapter 15579, Acts of 1931, the title to which reads as follows:

"An Act fixing a license fee for non-residents of the State of Florida for the privilege of fishing in the fresh waters of Washington County, Florida, providing a closed season on fishing in the fresh waters of Washington County, Florida, and providing a penalty for the violation of this law."

Section 1 of said Chapter provides for a license fee of \$25 to be imposed upon non-resident fishermen.

Section 2 makes it unlawful for any person to take or be in possession of any fresh water fish in and/or from the waters of Washington County, Florida, from the 15th day of March to the 15th day of May inclusive in each year.

Section 3 provides a penalty for violation of the Act. It will be seen, therefore, that the title to said Chapter gives fair notice of the contents of the body of the Act, and it is my opinion that said Chapter would be held by a court of competent jurisdiction to be a valid act.

Section 1 of Chapter 15121, Acts of 1931, provides for a closed season in the Choctawhatchee River from April 1st to May 1st. This provision is probably enforceable in all counties except Washington, which is governed by Section 2 of Chapter 15579, Acts of 1931, as to closed season.

It is my opinion that the only enforceable provisions in Chapter 15121, Acts of 1931, are the provisions providing for a closed season and for a penalty for violation thereof, and that these provisions are not enforceable in Washington County because there is a conflict between the provisions for a closed season in said Chapter, and the provision for closed season in Chapter 15579, which last mentioned Chapter is a valid act affecting Washington County only.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES—CONSTRUCTION OF STATUTE IN RE STATE GAME
COMMISSIONER AND DEPUTIES

May 18, 1932.

Dear Sir:

Complying with your request of this date for a construction of Sections 12 and 70 of Chapter 13844, Acts of 1929, permit me to say Section 12 of said Act reads as follows:

"All moneys collected from fines, penalties, or forfeitures under this Act shall go into the fine and forfeiture fund of the county where

such convictions are had. The State Game Commissioner and his deputies shall be allowed for making arrests the same fees as sheriffs, and the same mileage for conveying prisoners, *the same to be taxed as costs in the cause, in case of conviction*, and paid in the like manner as the compensation of sheriffs, but no fees or mileage shall be allowed in case of acquittal. All mileage and other fees received by the State Game Commissioner or any of his deputies under this Section shall be deposited in the State Treasury to the credit of the Game Fund."

Section 70 of said Chapter in part reads as follows:

"Anyone found guilty of violating any of the provisions of this Act shall be fined for the first offense not less than \$10 nor more than \$300, or imprisoned not to exceed 90 days, or be both fined and imprisoned in the discretion of the Court, and for a second or subsequent offense shall be fined not less than \$25 nor more than \$500, or imprisoned not more than six months."

Under the provisions of Section 12 of said Act, it appears that where the Court adjudges a person to be guilty, the Court must impose a fine of not less than \$10 for a first offense, and not less than \$25 for a second offense. It appears further that it is the duty of the Court to include in his judgment an allowance for the Game Commissioner or his deputy for making an arrest, the same fees as are allowed sheriffs and the same mileage allowed sheriffs for conveying prisoners, and this allowance must be taxed as costs in the cause in addition to the fines above stated against the person convicted.

Very truly yours,

CARY D. LANDIS,
Attorney General.

WILD BIRDS, NESTS AND EGGS—APPLICATION OF LAW IN RE PERMITS TO COLLECT SPECIMENS

April 27, 1932.

My Dear Sir:

This refers to your favor of April 27, in which you request my opinion as to whether or not the Director of the Florida State Museum still has authority to collect specimens of wild birds or their nests and eggs without a permit from the State Game Commissioner, as provided by Chapter 13644, Acts of 1929; and, also, whether or not the Florida Society of Natural History, an incorporated society of natural history in Florida, has authority to issue permits to collect specimens of birds or their nests and eggs.

There are a number of early statutes covering these questions, but the Legislature at its session in 1927 enacted into law Chapter 11838; Section 40 of this Chapter is as follows:

"No person shall at any time of the year take in any manner, number or quantity, any wild bird, game bird or game animal, or the nest or eggs of any wild bird, or possess, buy, sell, offer or expose for sale, or transport at any time or in any manner such birds or animals or parts thereof, or any birds' nests or eggs, *except as permitted by this Act.*"

Section 55 of this Chapter is as follows:

*"The State Game Commissioner may issue certificates giving the right to take or be in possession of non-game birds, game birds, or game animals and the nests and eggs of such birds for scientific purposes as herein provided. Certificates conferring the right to take specimens for scientific purposes may be issued by the State Game Commissioner upon such terms, conditions and restrictions as he may prescribe to any properly accredited person or representative of the United States Department of Agriculture, the Smithsonian Institute or other recognized scientific institution, or of the State Museum of the State University, or of any other State Institution, Town or City, permitting the holder thereof to collect or have in possession non-game birds, game birds or game animals, or the nests and eggs of such birds for strictly scientific purposes only; Provided, however, that no such certificate shall be operative as to migratory birds unless and until the holder thereof has a permit from the Secretary of Agriculture of the United States, permitting the collection of such birds or their nests or eggs. * * *"*

Section 75 of this Act is as follows:

"All other general or special laws or parts of general or special laws relating to game, fresh-water fish, *birds* or fur-bearing animals, whether in conflict herewith or not, are hereby repealed."

It will be seen by reference to these three sections that it was the intention of the Legislature to place in the hands of the State Game Commissioner the exclusive authority to issue permits to collect specimens of wild birds, their nests and eggs, etc.

The Legislature of 1929 enacted a new law, to-wit: Chapter 13644, covering the whole of this same subject, and Sections 39, 53 and 71 constitute a re-enactment of Sections 40, 55 and 75 of Chapter 11838 of the Acts of 1927. I find no subsequent legislation affecting this matter.

Thus it is that I am of the opinion that all persons, including the Director of the Florida State Museum and the Society of Natural History of Florida, must obtain permits from the State Game Commissioner, in accordance with Chapter 13644, Laws of Florida, 1929, before they will be authorized to collect specimens of wild birds, their nests and eggs.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

GAME LAW—WHEN LICENSE AND RIGHT TO HUNT
FORFEITED

December 8th, 1932.

Dear Sir:

This refers to your request for my opinion as to the effect of a plea of nolo contendere where a party is charged with violation of the State Game Law.

Where such a plea is entered and the party is then fined and sentenced, it is my opinion, that this constitutes a judgment of conviction. The law provides that where one is convicted for taking game illegally that he thereby forfeits his license and right to hunt for that season, and it is my opinion that if one is fined or sentenced under a plea of nolo contendere that this would constitute such a judgment of conviction as would forfeit the license and right to hunt of the party so sentenced or fined.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

STATE HOSPITAL FOR THE INSANE

DENTISTRY—PERSON CANNOT PRACTICE WITHOUT LICENSE

March 7, 1931.

My Dear Doctor:

The law relating to practice of professions such as dentistry, and the like is intended to control the personal functions of the individual.

It therefore makes no difference for whom the individual performs services, he must be personally qualified according to law to engage in any occupation for which a special license is required, such as dentistry, medicine, etc.

I am accordingly inclined to the view that it would not be proper for a man to practice dentistry at the Florida State Hospital until he obtains proper license from the State Board of Dental Examiners.

Yours very truly,

FRED H. DAVIS,
Attorney General.

STATE HOTEL COMMISSION

HON. B. H. BOSTAIN

APARTMENTS—SUBJECT TO INSPECTION LICENSE TAX

September 2, 1931.

Dear Sir:

Replying to your request of recent date for an opinion as to whether or not under the provisions of Section 3353 of the Compiled General Laws as amended by the Act of 1929 a furnished apartment with ten or more rooms is subject to an inspection license tax, permit me to say:

It is my opinion that every apartment house maintained as a place where living quarters, sleeping or housekeeping accommodations are supplied for pay to transient or permanent guests or tenants, in which ten or more rooms are used for the accommodation of such guests but which does not maintain a public dining room or cafe in the same building in connection therewith, is under the law a rooming house and subject to an inspection license tax.

An apartment building having no furniture in it could not be considered a rooming house until furnished by the owner or some other person and held out to the public as being maintained as a place where living quarters, sleeping or housekeeping accommodations are supplied to paying transients or permanent guests or tenants.

Regarding the validity of the Act under consideration permit me to say it is the duty of all administrative officers to assume that every statute passed by the Legislature is constitutional until the contrary is made to appear by some judicial decision.

Trusting you will find this to be satisfactory, and with best wishes, I am,

Yours very truly,

CARY D. LANDIS,
Attorney General.

APARTMENT HOUSES—SUBJECT TO INSPECTION LICENSE
TAX

October 21, 1931.

Dear Sir:

Complying with your request for my opinion in the premises, I beg to advise that under Section 3356, Compiled General Laws of Florida, 1927, it is your duty as hotel commissioner to collect inspection license fee from owners or operators of apartment houses having ten or more rooms, in accordance with the graduated scale of such fees as prescribed by said Section 3356.

Respectfully submitted,

CARY D. LANDIS,
Attorney General.

STATE LIVESTOCK SANITARY BOARD
DR. J. V. KNAPP, STATE VETERINARIAN

STATE LIVE STOCK SANITARY BOARD—AUTHORIZED TO
PAY ONE-HALF OF CERTAIN COSTS

March 11, 1932.

Dear Doctor:

This refers to your favor of March 11, wherein you ask my opinion relative to Section 3327, Compiled General Laws of Florida, 1927.

The specific question you ask is whether or not the State Live Stock Sanitary Board of Florida is authorized under this Act to pay only one-half

of the cost incurred by the cattle men in collecting together and driving their cattle to and from the dipping vats, or whether the Board is further authorized to pay to the cattle owners one-half of the actual necessary and reasonable expense in the construction of pasture fences.

It is my opinion that under the act, it is contemplated that the State Live Stock Sanitary Board shall pay one-half of the cost incurred by the cattlemen in collecting together and driving their cattle to and from the dipping vat.

It is further my opinion that the State Live Stock Sanitary Board is not authorized to pay any additional expense such as might be included in building or constructing pasture fences.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

STATE OFFICE—NO PERSON SHALL HOLD TWO

June 14, 1932.

Dear Doctor:

I have your inquiry with reference to the resignation of a member of the State Live Stock Sanitary Board, who has been nominated as a State Senator.

Section 15 of Article 16 of the Constitution of the State of Florida provides that no person shall hold or perform the functions of more than one office under the government of this State at the same time.

In the case of *McSween vs. State Live Stock Sanitary Board*, 97 Fla. 749, 122 So. 239, it appears that the Supreme Court considers the State Veterinarian as an officer, and by inference it seems that members of the State Live Stock Sanitary Board are also officers.

In the case of *Ex Parte Smith*, 96 Fla. 512, 118 So. 306, the Supreme Court holds that a nominee of a political party is not an officer.

In the *Advisory Opinion* of the Supreme Court, 65 Fla. 434. 62 So. 363, the Supreme Court holds that in order to qualify as an incumbent of an office, the oath prescribed by the Constitution must be duly taken. The constitutional provision on this subject is found in Section 2 of Article 16, which provides that each and every officer of the State including members of the Legislature, shall before entering upon the discharge of official duties take an oath.

In consideration of the above, I beg to say that in my opinion it will not be necessary for a member of the State Live Stock Sanitary Board, who has been nominated as a State Senator, to resign before his election in the general election of November. But he should resign before taking the oath of office provided for in Section 2 of Article 16 of the State Constitution.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE MARKETING BUREAU

SEEDS—REPORT OF SALE REQUIRED

June 2, 1931.

Dear Sir:

Yours of the 29th ultimo, addressed to Hon. T. J. Brooks, Assistant Commissioner of Agriculture, has been referred to this office for reply.

Section 7029, Compiled General Laws, requires all persons, firms or corporations in this State engaged in the business of selling any produce or other articles on commission in this State to furnish the shipper a sales account which shall describe the quantity, quality and price received for the produce or article sold, and the statute appears to require that the statement and remittance shall be made to the shipper within seven days of the sale. Section 7870, Compiled General Laws, provides a penalty for failure to comply with the section above referred to.

We note that you state that the main point at issue seems to be whether or not there is any legislation to require report on sale of seed. Inasmuch as Section 7029 requires a report on the sale of "any produce or other article," it is my opinion that seed grown in the State of Florida would be covered by this section.

Trusting you will find this to be satisfactory, and with best wishes, I am

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE PLANT BOARD

HON. P. K. YOUNGE, CHAIRMAN

QUARANTINE RULES SHOULD NOT CONFLICT WITH RULES OF
FEDERAL GOVERNMENT

January 1, 1931.

Dear Sir:

Replying to yours under date of October 12th, answer to which has been unavoidably delayed by the press of business, permit me to say:

It is my opinion that the quarantine rules adopted and promulgated for enforcement by your Board should in every instance be the same as the rules and regulations adopted and promulgated by the Plant Quarantine and Control Administration of the United States Department of Agriculture, for as stated in your letter the enforcement of rules and regulations would be impractical if the State rules and regulations conflicted with those of the Federal Government.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE PURCHASING DEPARTMENT

HON. W. C. THOMAS

SPRINKLER SYSTEM—BOARD OF COMMISSIONERS OF STATE INSTITUTIONS—NOT AUTHORIZED TO INSTALL

September 11, 1931.

Dear Sir:

In response to your request for an opinion as to the authority of the Board of Commissioners of State Institutions to legally contract for the installation of a sprinkler system at the Florida State Hospital at Chattahoochee, or other institutions of the State under the control of the Board of Commissioners of State Institutions and to pay therefor the difference between what the State is now paying for insurance and what it would be after a sprinkler is installed, I beg to advise that in my opinion this cannot be legally done for the following reasons:

(a) Section 2 of Article IX of the Constitution of Florida requires that the Legislature shall provide for raising revenue sufficient to defray the expenses of the State for each fiscal year. This means in the first place that the Legislature must provide for the raising of its revenue to defray State expenses, and the Legislature has not provided the means suggested, to-wit:

The payment of the difference between the present insurance rate and what it would be with a sprinkler system installed.

In the next place, it requires that such revenue be raised sufficient to defray the expenses of the State for each fiscal year, whereas the plan suggested as a means of paying for such sprinkler system would extend the payment therefor over a number of years, and the State cannot be bound by such a contract.

(b) Section 4 of Article IX of the Constitution prohibits any money being drawn from the Treasury except in pursuance of appropriations made by law. No appropriation has been made by law for drawing from the Treasury such funds as would equal the difference between the present insurance rate and that which would obtain under a sprinkler system, and the State Board has no authority to contract for the expenditure of money which has not been appropriated by law. Without such appropriation the same could not be drawn from the Treasury.

(c) Public policy demands the letting of contracts for such work, if and when same is done, to the lowest and best bidder upon competitive bids on a cash basis as contemplated by the Constitution.

(d) With particular reference to the installation of a sprinkler system in the Florida State Hospital at Chattahoochee, I respectfully call attention to the provision made by the Legislature in the General Appropriation Bill for all current operating expenses of the Departments and branches of the State Government for two years on June 30, 1931, in which \$40,000 was

appropriated for an automatic sprinkler and fire extinguisher system approved by the Southeastern Underwriters' Association for said Florida State Hospital. This matter having been provided for by appropriation made by law, the board would be without authority to contract for such sprinkler system on any other basis.

I therefore suggest and advise that the board cannot legally contract for the installation of a sprinkler system at the Florida State Hospital at Chattahoochee, or at any other public institution under the control of said board, for the difference between what the State is now paying for insurance and what it would pay after such sprinkler system is installed.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE ROAD DEPARTMENT—IN RE ADVERTISING FOR BIDS
FOR SUPPLIES OR EQUIPMENT

March 7, 1932.

Dear Sir:

I beg to call your attention to Section 1635 and 1636 of the Compiled General Laws, 1927, with reference to advertisement for bids for supplies or equipment for the State Road Department.

These two sections of the law require that whenever there is a purchase of State Road Department supplies or equipment to the value of \$1,000.00 or more, such bids shall be advertised for at least once a week for not less than two consecutive weeks in some newspaper having general circulation. It further seems to me that as a matter of practical application in obtaining the lowest bids, that it would be wise to mail notices to all persons who would probably be interested in making bids on such supplies and equipment.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

STATE RACING COMMISSION

HON. L. D. REAGIN, CHAIRMAN
HON. M. R. MABRY, SECRETARY

RACING PERMITS—RE-AMENDING APPLICATIONS

July 31, 1931.

Dear Sir:

This refers to your favor of July 25th in which you ask my opinion with reference to amending applications for racing permits.

It is my opinion that all applications must have been filed on or before July 1st, 1931, and I can see no legal objection to the State Racing Com-

mission permitting such amendments as may be necessary or required by the commission so long as such amendments or further information is furnished to the commission on or before the date when such applications are finally heard and the permit granted. It is my opinion that there would be no legal objection to the State Racing Commission treating any bona fide application made on or before July 1st as an application, and if it is not in full compliance with the terms of the law, that the board could permit such amendments as might be necessary or as might be required by the State Racing Commission so long as such amendments and such information is furnished to the State Racing Commission prior to its meeting when these applications are finally considered with a view of issuing permits.

Very respectfully,

CARY D. LANDIS,
Attorney General.

RACING PERMIT—RECEIVER ENTITLED TO

August 1, 1931.

Dear Sir:

This refers to your letter of July 25th relative to the application of L. M. Gerstel, Receiver of the West Flagler Amusement Company, Inc.

From the papers which you handed to me and which I am returning to you herewith, it seems to me that they are in due and proper form and show that L. M. Gerstel is the duly appointed Receiver in Bankruptcy of the West Flagler Amusement Company, Inc., and that his act in filing application with the Racing Commission has been duly authorized by the referee in Bankruptcy. I take it that there would be no question but that this Receiver would be entitled to the permit, provided, the estate is still in his hands as such Receiver, and the order confirming his act in making the application has not been rescinded or modified by further order of the courts prior to the time the State Racing Commission holds its meeting for the purpose of considering applications with a view of issuing permits thereon.

Very respectfully,

CARY D. LANDIS,
Attorney General.

RACING ACT—CONSTRUCTION

November 24, 1931.

Dear Sir:

This refers to your favor of November 23rd, and I shall undertake to answer your questions, each of which is numbered as hereinafter set forth:

1. What is the racing period with reference to opening branch offices and employing of assistants and employees?

Section 1 of the Racing Act has this language, "The State Racing Commission shall maintain an office in the City of Tallahassee, Florida, *but during the time in which racing is conducted* in this State may maintain branch offices elsewhere." Under the terms of the act, the time in which racing is conducted is from December first to April first; therefore, I am clearly of the opinion that the time within which you may maintain branch offices is from December first to April first.

As to the latter part of your inquiry, as to when you may employ assistants and employees, Section 1 of the Act provides as follows:

"A majority of the commission shall constitute a quorum for all purposes. Said commission shall be authorized to employ such assistants and employees as may be necessary, but only during the racing period herein prescribed and ten days previous and subsequent thereto, etc."

The racing period provided for by the act is from December first to April first, therefore, the period in which you may employ assistants and other employees is the period covering the ten days previous to December first and on through December, January, February, March and ten days subsequent to April first, or until the eleventh day of April.

2. What is the maximum and the minimum number of racing dates that can be fixed by the commission in counties where two or more horse or dog tracks have been approved by the voters.

Section 8 of the act provides that no license shall be granted in any county to extend longer than fifty racing days for horse racing and ninety racing days for dog racing in any twelve-month period. So it is that you cannot grant a license to any one person or track to run races for more than fifty days for horse racing and ninety days for dog racing. This, of course, means actual racing days.

3. Can the commission fix concurrent racing dates in such counties?

It is my opinion that the commission can fix concurrent racing dates in such counties.

4. Can the commission require additional information with reference to applications for permits at any time or after the application has been approved and permit issued or before a license is issued and after the referendum of approval has been held?

The law specifically provides a number of things that must be set forth in the application for a racing permit, and also provides that you may require in such application such other information as you may desire. Then upon this application, when properly filed in accordance with the terms of the act, you issue their permit. It is my opinion that you have no further right to make inquiry with reference to a permit, and that after ratification by the voters, you have no right to inquire further into the permit, other than that you have the right to investigate anyone conducting a race track, under the laws of Florida, and who are subject to your rules and regulations and to a full and faithful compliance of the law, and what-

ever is necessary on the part of your commission to insure the faithful compliance with the law, you have a right to do and perform and require.

5. Can the non-payment of premiums on bonds in any way affect the recovery under said bonds or should the commission require payment of such premiums before issuance of licenses?

It is my opinion that when the bonding company executes the bond and the bond is delivered, the question of the payment of the premium has nothing to do with the liability on the bond. After the delivery of the bond, payment of the premium is a question between the bonding company and the principal in the bond.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

PALM BEACH GREYHOUND ASSOCIATION—BOND APPROVED

December 2, 1931.

Dear Sir:

This is to advise you that I have looked over the bond given by the Palm Beach Greyhound Association, Inc., to the Honorable Doyle E. Carlton, in the sum of \$50,000.00, dated the 25th day of November, 1931, the same being a bond to cover racing license to the Palm Beach Greyhound Association, Inc., and would state that the same seems to be in due and regular form and has my approval.

I understand that Mr. M. C. King wishes to withdraw the original Power of Attorney attached to this bond, and inasmuch as this original Power of Attorney has been recorded in Palm Beach County, I would state that if Mr. King will procure a certified copy of the same as recorded in that county and attach to the bond, that it will meet with my approval for him to take down the original Power of Attorney and you to substitute the certified copy instead of the original.

Very respectfully,

CARY D. LANDIS,
Attorney General.

RACING COMMISSION—CONSTRUCTION OF LAW

December 28, 1931.

Dear Sir:

This refers to your favor of December 23rd.

First. It is my opinion that all of the bonds made by the various racing associations running to the Governor, should, after their approval, be filed with the Secretary of State, you keeping in your files proper receipts covering the deposit of such bonds with the Secretary of State.

Second. Where the State Racing Commission bonds its assistants and employees, the said bond should run to the Governor of the State of Florida. Three copies of the form of bond herewith.

Third. It is my opinion that under the Racing Act, Chapter 14832, that when the State Racing Commission fixes the period for a race meet, that the association should operate the track for and during the entire period fixed by the State Racing Commission. The act is somewhat indefinite, but the act does provide that these dates shall be fixed annually, and further the act provides that on every seventh day there shall be payments made and a report to the State Treasurer. Furthermore, the State is interested in this matter, and it is my opinion, that the racing association holding a permit cannot operate just as it pleases within the time specified, but that after their permit is granted they then have a hearing before the State Racing Commission and when the license is granted fixing the date, it is my opinion that it is then the duty of the racing association to hold its race meet during that time on each and every racing day within that period.

Very respectfully,

CARY D. LANDIS,
Attorney General.

RACING COMMISSION—APPLICATIONS FOR PERMITS, TIME
FOR FILING

January 16, 1932.

Dear Sir:

This refers to your letter of January 13, relative to request of some people wanting to file application for permit at this time, and obtain action of the Racing Commission at this time so as to allow them to have races this year.

It is my opinion that this cannot be done under the terms of the act. The act states that all applications must be filed on or before July 1 of each year, and that from July 1 to August 15 of each year, all applications for permits will be considered by the Racing Commission. Thus it is that you cannot act on this application only between July 1 and August 15.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RACING ACT—OCCUPATIONAL LICENSE TAX LAWFULLY PAID

March 21, 1932.

Dear Sir:

This refers to your favor of the 17th instant, with which you enclose claim filed by L. A. Schroeder, Jr., attorney at law, on behalf of various individuals who were salesmen at the Biscayne Kennel Club for one Steve Stefanos who had a lunch and soft drink concession.

I note that you collected the license from these individuals. I think you did this properly and that the law required it. The law requires this

with reference to all persons connected in any way or manner with the operation of any racing track. It seems to me that if there had not been a racing track there would not have been anything for Stefanos and these salesmen to have done. There is no question in my mind that these men properly paid the license for occupational tax and that it should not be refunded. This is entirely different from the question where one or two licenses were paid for and then the parties were not permitted to perform any service or have any connection whatsoever with the racing track.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

RACING ACT—IN RE APPLICATION FOR PERMITS—BOND
REQUIRED

April 27, 1932.

Dear Sir:

This is in reply to your favor of the 14th instant, addressed to the State Racing Commissioner, at Tallahassee, Florida, the same having been handed to me for attention.

Section 5 of Chapter 14832, Laws of Florida, Acts of 1931, provides that:

"On or before the first day of July of each and every year, any person, association or corporation possessing the qualifications prescribed in this act shall have the right to apply to said commission for a permit to conduct race meetings and racing under this act. On or before the 15th day of August of each and every year after receipt of any such application the commission shall convene at the State Capitol to consider and grant permits applied for."

In Section 7 of the same act we find this language:

"After the first license has been issued to the holder of a ratified permit for racing in any county, all subsequent applications by said ratified permit holder for a license, shall be accompanied by proof, in such form as the commission may require, that the ratified permit holder still possesses all the qualifications prescribed by this act, and that the permit has not been recalled at a later election held in such county."

Thus, it is my opinion that a race track that is now in operation in this State must make its application for its next year's permit on or before the first day of July, 1932, and that on such application the State Racing Commission shall on or before the 15th day of August, 1932, consider and grant the permit on such application.

Section 14 of the act provides that:

"Before any such license is delivered the person, association or corporation to which a license may be granted must give a bond in the penal sum of \$50,000.00, payable to the Governor of the State of Florida, and his successors in office, with a surety or sureties to be approved by the commission and the State Treasurer, etc."

Yours very truly,

CARY D. LANDIS,
Attorney General.

RACING ACT—CONSTRUCTION IN RE BOND

May 23, 1932.

Dear Sir:

This refers to your favor of May 21, enclosing letter from A. C. Hoffman, Superintendent of the Globe Indemnity Company. Mr. Hoffman makes inquiry as to liability on Bond No. 766338—O. M. Carmichael.

The State Racing Act requires an annual application and granting of a license and, likewise, requires a bond each year covering the new license.

The bond given by O. M. Carmichael was, under his license, to cover dates fixed by the State Racing Commission during the year 1931-1932, as to the races to be run on that track under the dates stipulated and fixed by the Racing Commission. This bond covers the faithful making of payments due the State Treasurer in his capacity as Treasurer in the keeping of books, records and reports, as is required by law, and the conducting of the races in conformity with the Racing Act. The acts required and for which the bond guarantees faithful performance, are those acts that are committed and done, under the license granted for the license year, which expires upon the closing of the races held on the dates as fixed by the Racing Commission, during the license year. The bond, however, as to these acts remains in force and effect until barred by the Statute of Limitation, which is twenty years, on a sealed instrument. This bond, however, does not cover any liability for acts of Mr. Carmichael under any subsequent licenses which may be granted to him by the board. In other words, annual license must be granted, and supporting each annual license, there must be a bond, and each bond is conditioned for the proper performance and requirements for each license under the law.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

RACING ACT—PERMITS NOT TRANSFERABLE

May 30, 1932.

Dear Sir:

This refers to your favor of May 27th in which you ask my opinion as to whether or not the Racing Commission could not issue a permit to a company this year, this permit to cover the property of another permit holder who received a permit last year. In reply to this, I beg to advise that Section 21 of the Racing Act provides:

"That no permit or license granted under the provisions of this Act shall be transferable or assignable."

The act also requires that any person, association or corporation desiring to operate a racing track shall file application with the commission to be duly acted upon, and if permit is granted, then the permit must be submitted to the vote of the electors to determine if a license shall be granted based on this permit. After the license is once granted to a person or corporation and the year's license has run, they must again apply for a renewal of the license for the next or succeeding year. Thus, it is plain to me that the Legislature intended that anyone wishing to obtain a license must first apply in his own name and obtain his permit and then submit the matter to the voters. I do not think you could issue a permit to a man to cover the property of another person who had already been issued a permit, but he must apply himself by an original application.

With my kindest personal regards, I beg to be

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

RACING ACT—APPLICATION FOR PERMIT TO OPERATE UNDER CERTAIN CONDITIONS

June 15, 1932.

Dear Sir:

This refers to your favor of the 7th instant.

If I understand the question, it is based on the following facts: One person has procured a permit and the permit has been favorably acted upon by the voters of the county covering racing on a certain property, but that no race meeting was held.

If this same party wishes to obtain a license for next year's racing, he will have to make proof in such form as the commission may require that his permit has not been revoked and that he still possesses all of the qualifications prescribed by the act. One of the qualifications required by the act is the exact location where it is desired to conduct or hold the racing meet and whether the racing plant is owned or leased, etc. If another

person wishes to make an application for a permit on this same location, he could do so, but he would have to show that he either owned or leased the property and the Racing Commission would then find itself in the position where two persons were claiming to either own or lease the same plant.

I do not believe the Racing Commission is called upon to decide which party has the proper right to hold the property, either by ownership or lease, but it would be my opinion, that the Racing Commission should not grant a license or permit to either party until they had determined this matter between themselves. It is furthermore my opinion that any conflict over the right and title by ownership or lease will be a matter for the courts and not for the Racing Commission, and until this matter is settled, no action should be taken by the Racing Commission, either in favor of or against either party.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

RACING LAW—PERMIT OR LICENSE NOT TRANSFERABLE

June 27, 1932.

Dear Sir:

This refers to your favor of June 25th.

With reference to the permit and license issued to L. M. Gerstel, Receiver for the West Flagler Amusement Company, Inc., I beg to advise that it is my opinion that if the Receiver is discharged this will terminate both the permit and the license. Section 21 of the Racing Act provides that:

"No permit or license granted under the provisions of this act shall be transferable or assignable."

If the receivership is closed out and the Receiver discharged, it is my opinion that any one of the parties mentioned wishing to operate this track will, of necessity be forced to obtain a permit and the approval of the people at an election just the same as any other individual or company who may wish to operate a track.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

RACE TRACKS, OPERATORS—BOND REQUIRED WITH EACH ANNUAL LICENSE

September 2, 1932.

Dear Sir:

I am in receipt of your letter of August 29 enclosing communication from Mr. H. P. Bloodworth, manager, bonding department of the Fidelity and Casualty Company of New York, under date of August 27, 1932, rela-

tive to surety bonds in the sum of fifty thousand dollars under the provisions of Section 14 of Chapter 14832, Acts of 1931.

The two points of inquiry appear to be as follows:

(a) Whether a new bond is required each year?

(b) Whether the liability of a surety under two or more successive bonds to the same party is cumulative?

In a recent opinion prepared in this office and signed by me, the following language was used:

"Answering your letter of August 15, 1932, with reference to form of bond executed by operators of race tracks under the provisions of Chapter 14832, Acts of 1931, I beg to say that after examination of one of the executed forms in the office of the State Treasurer, it appears that the bond is continuous for successive years without limitation. This appears to be the situation regardless of further premium payments."

After a more careful examination of the statute, I find that the above language should be modified.

Section seven of the above mentioned act appears to contemplate the issuance of annual licenses and Section fourteen appears to require the filing of a new bond with each annual license.

While the form of the bond is indefinite as to time, it should be construed with reference to the statute to which it relates.

Since the statute as above pointed out appears to require an annual license and the filing of a new bond upon issue of each annual license, the bond in my opinion covers only such operations as are within the license year, and successive bonds to the same party for successive license years would apply only to the particular license year for which each successive bond is written. Each of such bonds would appear to be continuous only as to the particular liability of each bond.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PERMITS—BOARD HAS NO DISCRETION IN GRANTING

July 3, 1931.

Gentlemen:

This letter is in response to your inquiry as to whether or not, or to what extent, a discretion rests with the State Racing Commission in the issuing of racing permits.

Senate Bill No. 361, which is the act providing for a State Racing Commission, enumerates and prescribes the duties, powers, etc., of said commission.

Section 2 of Senate Bill No. 361, among other things, provides that the State Racing Commission shall require of each applicant for a racing permit an application setting forth certain definite information. See Section 2 of the Act—sub-section (3) with the further subsections (a), (b), (c), (d), (e) and (f).

This act further provides that the application setting forth such required information shall be under oath of the person or executive officer of the association or corporation making the application, and further provides that your body may require such other information as you may deem proper.

Section 5 of the act, among other things, uses the following language:

"Upon all applications filed a permit *shall be issued* to the applicant setting forth the name, the location of the race track, the kind of racing desired to be conducted, and a statement showing qualifications to conduct racing at said track under this act; provided, however, no permit shall be effectual to authorize any race until ratified by a majority of the voters participating in such election in the county in which applicant proposes to conduct racing."

It is my opinion that when an application has been duly filed on or before the time required by the act, and such application complies with the requirements as to the matters and things to be set forth in such application, that then it becomes the duty of your board to grant the permit, and that there is no discretion in your body as to the granting of such permit so long as the application is in due form, and has been properly filed within the time limit prescribed by law.

When a permit is issued, then the party to whom the permit is granted may, under the terms of the act, have the matter submitted to the electors of the county in question, and it is for the voters of the county to determine whether the permit shall be approved, and, if approved, then the license shall issue in due course in accordance with the terms of the act.

Very respectfully,

CARY D. LANDIS,
Attorney General.

STATE ROAD DEPARTMENT

ROAD—STATE ROAD DEPARTMENT AUTHORIZED TO PAY FOR
CERTAIN CONSTRUCTION WORK

March 21, 1931.

Dear Sir:

Replying to your favor of the 20th instant requesting an opinion as to whether or not your department can legally pay the claim of the town of Lantana for the construction work on Dixie Highway going through this town.

As I understand the facts, there is no question but that this road is a part of the Dixie Highway, is under the control of your department and that the construction, while made by the town, was in accordance with the specifications and requirements of the State Road Department, and apparently by and with the consent of the State Road Department and I can see no legal objection to your paying this claim. I would gather from the papers and documents submitted that the probability is that there was an agreement with the Road Department that this particular construction should be paid for by the State.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BRIDGE ACROSS ST. JOHNS RIVER—STATE ROAD DEPARTMENT NOT AUTHORIZED TO PURCHASE

June 17, 1931.

Dear Sir:

This refers to your favor of the 16th instant in which you request my opinion as to whether or not the State Road Department would be permitted to take over by purchase what is known as the Memorial Bridge across the St. Johns River, constructed by Putnam County.

I understand this bridge was constructed from the proceeds of a bond issue, and that such bridge is now subject to such bonded indebtedness. It is my opinion, therefore, that the State Road Department is not authorized to take over by purchase the said Memorial Bridge, for the reason that Section 6 of House Bill No. 91, which has now become a law, specifically provides:

"That in no case shall the Department be permitted to take over by purchase any such bridge or road subject to bonded or mortgage indebtedness, etc."

This act was evidently worded as it is to avoid the constitutional limitation upon the right of the State to go into debt through its State Road Department beyond authorized levies made from year to year.

Respectfully submitted,

CARY D. LANDIS,
Attorney General.

GASOLINE TAX—STATE ROADS ONLY TO PARTICIPATE IN
DISTRIBUTION

August 24, 1931.

Dear Sir:

Replying to your favor of the 19th instant, regarding the proper construction of House Bill No. 65-X, the same being Chapter 15659, permit me to say:

In view of the language in Section 8, paragraph A which refers to the construction of "roads that are now designated State roads," the only roads that should be taken into consideration by the department to participate in the distribution of gasoline tax should be those roads which have been designated State roads prior to the date of the approval of Chapter 15659, Acts of 1931.

Trusting you will find this to be satisfactory, and with best wishes, I am

Yours very truly,

CARY D. LANDIS,
Attorney General.CONVICTS—STATE ROAD DEPARTMENT NOT AUTHORIZED TO
RETURN TO STATE PRISON FARM

August 31, 1931.

Dear Sir:

This is in response to your request for an opinion as to whether or not the State Road Department can return to the State Prison farm a number up to five hundred of the State convicts.

Section 8616 of the Compiled General Laws of Florida, 1927, provides for the creation of what is therein termed "a State convict road force, which shall include all male State or felony prisoners who, in the judgment of the State Prison physician are capable of performing any of the several duties of road construction and maintenance; except that there shall be retained at the State Prison Farm or other State institutions seventy-five Class I prisoners."

Section 8620 of the Compiled General Laws 1927, provides how the State Road Department shall use such convicts and Section 8621 provides that "all prisoners, employed on the State convict road force shall be transported, housed, fed, clothed and cared for from such funds as are, or may hereafter be apportioned for the use of the State Road Department."

Thus it is that it is my opinion that under these several acts, the State Road Department cannot return to the State Prison Farm convicts which comprise a part of the State convict road force, except in the case of disabled convicts, which is provided for by Section 8618 of the Compiled General Laws of Florida.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BRIDGE OF LIONS, ST. AUGUSTINE—LAW AUTHORIZES
DEPARTMENT TO LEASE OR RENT

January 22, 1932.

Dear Sir:

This refers to your letter of January 16, in which you state that the Road Department desires to know whether or not the State Road Department is authorized to take over and lease what is known as the Bridge of Lions in the City of St. Augustine, by virtue of such authority as is granted the State Road Department by Chapter 15024, Laws of Florida, Acts of 1931.

Section 5 of this chapter uses this language: "The State Road Department shall also have the right to lease and rent annually any toll bridges and roads heretofore constructed on or connecting any State highway or highways, subject to the provisions of this section with respect to the amount of annual rental which may be paid, etc."

There are four State highways leading to or into the corporate limits of St. Augustine, as I understand it, to-wit: State Roads numbers 4, 48, 78 and 140.

The Bridge of Lions is a bridge as I understand it, built and constructed and now owned by the City of St. Augustine, a municipality of the State of Florida. This bridge is and has been operated by the City as a toll bridge. Anyone coming from the south part of the State on the roads leading into St. Augustine must use the Bridge of Lions, if they wish to get to and connect with the State roads leading from St. Augustine northward and vice versa. In other words, it can be but little questioned that the Bridge of Lions is used as a connecting bridge, whereby the traveling public must travel in order to get from one State highway to another.

By careful scrutiny of the act above mentioned, it will be seen that the State Road Department is vested with authority to lease and rent annually:

1. Any toll bridges heretofore constructed on State highways.
2. Any roads heretofore constructed on State highways.
3. Any toll bridges connecting any State highway or highways.
4. Any roads connecting any State highway or highways.

The question then arises as to what is meant by a toll bridge "connecting" any State highway or highways. The use of this term "connection" or "connect," with reference to the means of communication, does not necessarily mean a *physical* connection. Webster's International Dictionary defines the word "*connect*", "to meet or make connections for the transference of passengers, or change of means of communication"; "the act, event, or means of communication or of continuation of a journey"; "that which connects."

Inasmuch as the Bridge of Lions is a part of a physical roadway, which is necessary for the traveling public to use in making their connection from one State highway to another, it is my opinion that the Bridge of Lions

is such a bridge as is contemplated that the State Road Department would have the right to lease and rent annually, under the terms of Chapter 15024.

I do not believe that the Legislature had in mind only such bridges as made an actual physical connection from one highway to another.

Thus it is that it is my opinion that the State Road Department has the authority under Chapter 15024, to lease the toll bridge known as the Bridge of Lions in St. Augustine, as long as they comply with the further terms of the law, with reference to leasing of toll bridges.

Whether the bridge should be leased or not, is, of course, a question of policy which lies within the sound judgment and discretion of the members of the Board of the State Road Department.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

AUTOMOBILES—OFFICIALS AND EMPLOYEES WHEN \$2.00 TAG
TAX APPLICABLE

August 3, 1932.

Dear Sir:

This refers to your favor of August 1st in which you request my opinion as to whether or not under the recent Supreme Court decision in the case of State of Florida, ex rel., S. C. Butler vs. W. B. Cahoon as Sheriff of Duval County, passenger cars owned by the State Road Department and used exclusively by the officers and employees of that Department would be exempt from the license tag tax, except at the exempt rate of \$2.00 each. The Court uses language in the opinion as follows:

"Passenger automobiles owned by municipalities and used exclusively by officers or employees of the municipality *for governmental purposes only* are not in terms excepted from the operation of the statute under consideration. But such automobile can logically be held to fall in only one classification for which registration fees are provided by the statute. That classification is "exempt or official, \$2.00 flat."

It is my opinion that under the language of the Court passenger automobiles used exclusively by officers or employees of the State Road Department in the business and functioning of that department would be liable for only the \$2.00 exempt rate tags.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

TOLL BRIDGE ACROSS APALACHICOLA RIVER—LAW VALID

August 31, 1932.

Dear Sir:

In accordance with your request, I have examined Chapter 15218, Laws of Florida, Acts of 1931, which was approved July 5th, 1931, providing for the financing, construction and operation of a self-liquidating toll bridge across Apalachicola River and East Bay, the same to become a part of the State highway system after liquidation. Section 10 of the act provides for its liberal construction to effectuate its purpose as a public emergency measure.

It is my opinion that this statute is a valid enactment, and its provisions are not in conflict with the organic law of the State. If and when the act has been approved and ratified by the qualified electors of Franklin County at an election held in accordance with the referendum clause contained in said act, bonds issued by the Board of County Commissioners of Franklin County and delivered to the State Road Department in the manner provided, will, in my opinion, be valid obligations of Franklin County for the purpose of and to the extent provided by the terms of the act, and the State Road Department would be authorized to sell or hypothecate the bonds to the Reconstruction Finance Corporation to secure funds for the purposes contemplated by the act.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

STATE HIGHWAY — CONSTRUCTION OF LAW IN RE MAINTENANCE AND PROTECTION

November 23, 1931.

Dear Sir:

Section 1650 of the Compiled General Laws 1927 among other things provides as follows;

"It shall be the duty of the State Road Department to maintain the State roads and to protect and preserve the same from trespass and injury and to prevent such use of and traffic on said roads as is or will be liable to injure or destroy the same, and is or will be liable to endanger the comfort and safety of public travel on said roads."

It is my opinion that under this Section of the law, the duty devolves on the State Road Department to do those things and to prevent the doing of those things by others, which will preserve and protect the State roads. Under appropriations to your Department for maintenance, it is my opinion that you have authority to appoint or hire such inspectors or road patrolmen

or such agents as in your judgment or wisdom it is necessary in order that the laws of the State of Florida may be enforced to protect and preserve the State highways.

Senate Bill No. 411 (Chapter 14764), enacted into law in 1931, in Section 11 thereof provides that certificated carriers are limited to weights not to exceed certain amounts, to-wit: passenger carrying busses not to exceed a greater vehicle weight of 18,000 pounds, etc., and certificated common carriers, neither truck nor trailer to carry a load in excess of 12,000 pounds, etc., and that the vehicle weight of such trucks or trailers shall in no event exceed the maximum load weight of 12,000 pounds, etc. Section 15 of Senate Bill No. 411, provides that the violation of the requirements of this Act shall constitute a misdemeanor and Section 22 of Senate Bill No. 411 provides that the State Railroad Commission may employ inspectors with powers of the Deputy Sheriffs of the several counties of the State and to make arrests, etc., for the violation of Senate Bill No. 411. These inspectors when duly appointed and qualified under this law would have the power of Deputy Sheriffs for the enforcement of this Act in any of the several counties of the State.

House Bill No. 1-X (Chapter 15625) enacted into law in 1931 places certain limitations on the weights of motor vehicles generally, this covering motor vehicles other than the certificated common carriers. This Act also makes the violation of this law a misdemeanor. Your Department, under Section 1650 is unquestionably interested in the enforcement of both laws, to-wit: Senate Bill No. 411 and House Bill No. 1-X, and the question arises as to the method of this enforcement.

First. I am clearly of the opinion that with your maintenance funds you have the right to employ such inspectors, agents, etc., as may be necessary to bring about the enforcement of these laws above mentioned.

Second. Such inspectors, agents, etc., would not have the right or the authority to make arrests, or to exercise the powers of Sheriffs or Deputy Sheriffs in the various counties where the violations might take place.

Third. The only persons having the right to make arrests under these laws would be:

(a) Inspectors appointed by the State Railroad Commission, with the limited authority of making arrests for the violation of the requirements of Senate Bill No. 411.

(b) Sheriffs or Deputy Sheriffs where they find either Senate Bill No. 411 or House Bill No. 1-X being violated would have the power of making arrests within the territorial limits of their county.

Thus it is, to practically work out a method of enforcement of these laws, my suggestion is that the State Road Department employ such inspectors or road patrolmen as they deem necessary to work with and co-operate with the Sheriffs and Deputy Sheriffs in the various counties, and when a violation is found by an inspector or patrolmen, that the Sheriffs or Deputy Sheriffs then exercise their authority by making the arrest. I take it that certain

strategic points may be selected where there might be located a Deputy Sheriff or patrolman from your Department, and in this way the violation of the laws can be detected and arrests made and proper enforcement brought about and the State roads protected. My suggestion would be that the State Road Department request the Governor to have proper Deputy Sheriffs appointed by the Sheriffs in such counties as it may be thought necessary to have additional Deputies, and that the Sheriff's office in these various counties be called upon by the Governor, the head of the Executive Department of the State to assist and co-operate with your employees in carrying out the proper enforcement of these laws.

It is my opinion that if this method of enforcement is pursued vigorously that the State Railroad Commission will not be required to appoint inspectors. The authority of the inspectors appointed by the State Railroad Commission being limited to the enforcement of Senate Bill No. 411 it is my opinion that it would be far better to undertake to carry out the enforcement of the law as I have above outlined, because the Deputy Sheriffs and the inspectors appointed by your Department can bring about a compliance with not only Senate Bill No. 411 but also a compliance with House Bill No. 1-X, as well as any other violation of the road laws of the State of Florida. It is further my opinion that the State Road Department under Section 1650 of the Compiled General Laws, 1927, has full power and authority to make such rules and regulations as are reasonable and just with reference to weight of load, length and width of vehicles, character of tires, etc., as may be proper to be used on the different roads in the State of Florida—all of this with the view and purpose of preventing the use of such vehicles and such loads on the State roads as will injure or destroy the same.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

MOTOR VEHICLES—CONSTRUCTION OF LAW IN RE TRAFFIC REGULATIONS

October 28, 1932.

Dear Sir:

Your letter of the 21st instant relating to the above subject and requesting my opinion on the matter stated therein, together with the attached letter from E. H. Vrieze, Branch Manager for Eppinger & Russell Company, has had careful consideration, and I give you the benefit of my views for whatever they may be worth.

Assuming that the operations of Eppinger & Russell Company in assembling their raw materials for manufacture do not require them to be certified under the provisions of Chapter 14764, Laws of Florida, Acts of 1931, they are bound by the regulatory provisions of Chapter 15625, Acts of 1931, in operating motor vehicles upon the highway of the State in such operations.

Paragraph (10a) of Section 3 of Chapter 15625 makes it unlawful for any person, firm or corporation to operate or cause to be operated upon the public highways of the State any motor vehicle, the over-all length of which, including body, frame and load when single vehicle, shall exceed 35 feet or, when a combination of vehicles (including motor tractors, trailers, semi-trailers and/or vehicles) shall exceed 45 feet. It is provided therein that these limitations shall not apply to telephone companies, telegraph companies, railroad companies, power companies, and utility companies, or their agents or contractors, in the transportation of poles and wire over the highways of this State in the conduct of and as an incident to their construction or repair. It is noted that this exception applies to such companies and agents and contractors only in the following instances:

(a) In the transportation of poles or wire over the highways of this State.

(b) It must be in the conduct of such company's business in their construction or repair work.

(c) Or as an incident to such company's construction or repair work.

In my opinion the facts stated in the letter of the Branch Manager for Eppinger & Russell Company do not bring their operators within the purview of the exception to the limitation of the over-all length prescribed in paragraph (10a) of Section 3 of Chapter 15625. It cannot be said, in my opinion, that the operation of motor vehicles upon the highways of the State, as related in said letter, is that of either agent or contractor of such exempt company in the conduct of the company's construction or repair work, nor as an incident thereto.

Under the facts stated, it appears to me that the operation of motor vehicles upon the highways by Eppinger & Russell Company in assembling material at its plant for manufacture and treatment of a product to be sold, is incident to that business and not to the conduct of telephone companies, telegraph companies, railroad companies, power companies, or utility companies in their construction and repair work.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TRUSTEES INTERNAL IMPROVEMENT FUND

HON. F. C. ELLIOTT, SEC'Y

EVERGLADES DRAINAGE DISTRICT TAX CERTIFICATE—AUTHORITY OF TRUSTEES I. I. FUND WITH REFERENCE TO

October 31, 1931.

Dear Sir:

I am in receipt of your letter of the 28th instant, addressed to Mr. M. C. McIntosh, Assistant Attorney General, making inquiry as to the present authority of the Trustees Internal Improvement Fund with reference to Everglades Drainage District Tax Certificates or with reference to Everglades Drainage District Tax Deeds.

Chapter 14,717, Laws of Florida, Acts of 1931, in Section 65, paragraphs (A) and (B), contains the following language:

(A)—"It is hereby recited and declared that all tax sale certificates in the hands of the Trustees of Internal Improvement Fund of the State of Florida, whether evidencing a lien upon, or title to, lands within Everglades Drainage District, which said tax sale certificates were issued to the said Trustees of Internal Improvement Fund in pursuance of the sale of lands for the non-payment of taxes or assessments heretofore levied and imposed by, or upon behalf of Everglades Drainage District are held by such Trustees of Internal Improvement Fund in trust for Board of Commissioners of Everglades Drainage District, and that the beneficial interest in, and title to, said tax sale certificates are vested in Board of Commissioners of Everglades Drainage District, subject to the right of Trustees of Internal Improvement Fund, to be repaid by Everglades Drainage District, any sums of money which may have been advanced by Trustees of Internal Improvement Fund for the account of Everglades Drainage District and which shall be found to be owing by Everglades Drainage District to such Trustees."

(B) "Within ninety (90) days after this Act goes into effect, or as soon thereafter as practicable, the said Trustees of Internal Improvement Fund shall assign, transfer and deliver unto Board of Commissioners of Everglades Drainage District all such tax sale certificates and the said Board of Commissioners of Everglades Drainage district shall thereupon become seized and possessed of every right, title and interest now vested in said Trustees of Internal Improvement Fund under and by virtue of said tax sales certificates. * * *"

You state in your letter that the transfer of Everglades Drainage District Tax Certificates and settlement between the Trustees and the Board of Commissioners of Everglades Drainage District provided for in paragraph (B), above quoted, was completed on September 21, 1931.

Since Everglades Drainage District Tax Certificates have been transferred and the settlement between the Trustees Internal Improvement Fund and the Board of Commissioners Everglades Drainage District has been completed, I do not think the said Trustees are authorized to perform further acts with reference to such transferred tax certificates. Neither do I think that the said Trustees are authorized to perform any further acts with reference to Everglades Drainage District Tax Deeds executed by said Trustees as agents of the Everglades Drainage District. I think that all inquiries or requests relative to Everglades Drainage District Tax Certificates or relative to Everglades Drainage District Tax Deeds or other matters pertaining to the Everglades Drainage District should be transmitted to the said Everglades Drainage District for handling.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RIGHT-OF-WAY—TRUSTEES I. I. FUND NOT AUTHORIZED TO
CONVEY TO U. S. GOVERNMENT

October 3, 1931.

Dear Sir:

I am in receipt of your letter of the 30th inst., addressed to Mr. M. C. McIntosh, Assistant Attorney General, and making inquiry as to whether the Trustees of the Internal Improvement Fund may grant right-of-way 400 ft. wide to the United States Government for the purpose of constructing works for draining and reclaiming lands which came to the State by Act of Congress, approved September 28, 1850, where the said lake bottom lands have passed into private ownership and where the deeds from the Trustees of the Internal Improvement Fund, conveying the same, contained the following saving and reserving clauses:

"Saving and Reserving unto the said, the Trustees of the Internal Improvement Fund of the State of Florida, and their successors, the right at any time to enter upon the said lands and make or cause to be made and constructed thereon such canals, cuts, sluiceways, dikes and other works as may in the judgment of the said Trustees, or their successors, be necessary and needful for the drainage or reclamation of any of the lands granted to the State of Florida, by Act of Congress, approved September 28, 1850, and to take from the said lands hereby conveyed and to use such gravel, stone or earth as may, in the judgment of the said Trustees, or their successors, be necessary to use in the making and construction of said canals, cuts, sluiceways, dikes and other works upon said lands for the purposes aforesaid.

"And Further Saving and Reserving unto the said, the Trustees of the Internal Improvement Fund of the State of Florida, the right to the exclusive possession, occupation, use and enjoyment of a strip of land running across the above described premises, one hundred and thirty feet on each side of the center line of any canal, cut, sluice-way or dike that may be made and constructed on said land by the said Trustees of the said Internal Improvement Fund of the State of Florida, or their successors, for the purpose aforesaid and the exclusive right to take, use, sell, dispose of and enjoy any timber, earth, stone, rock or gravel lying in or upon said strip of land."

The last above quoted reservation you will observe has reference only to a strip of land 260 ft. in width. The first above quoted reservation, however, appears to reserve to the Trustees the right to use any lands without any regard to width that may, in their judgment, be necessary for drainage or reclamation purposes with reference to swamp and overflowed lands.

You will note that the above reservations are only to the Trustees of the Internal Improvement Fund, and their successors, and no mention

is made of their assigns. From a careful reading of both of these reservations, it appears that the word "successors" recited therein, refers only to the successors in office of the said Trustees and not to grantees as successors.

Since these reservations appear to be to the Trustees of the Internal Improvement Fund, and their successors in office only, and by the recitals contained in said reservations are dependent upon determination of facts by the said Trustees, or their successors, I do not think that the said Trustees are authorized to convey a strip of land 400 ft. wide, or any other width, across lands of the bottom of Lake Okeechobee where such lands have passed into private ownership and where the deed of conveyance from the Trustees contains the above reservation clauses. I think, however, the Trustees may quit-claim any right, title or interest which they may have in and to such lands by virtue of the above quoted reservations. Such a quit-claim deed from the Trustees of the Internal Improvement Fund, together with a deed of conveyance from the present holder of title to such lands, would give the United States Government complete title.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LANDS—IN RE SALES AND TAXES

July 1, 1932.

Dear Sir:

I have your letter of the 27th ultimo, with reference to Chapter 14572, Laws of Florida, Acts of 1929, in which you make certain inquiries respecting the sales of land by the Trustees of lands coming to them under the provisions of said Chapter and remittances of funds received by the Trustees for such sales.

Your first question reads as follows:

1. When the Trustees of the Internal Improvement Fund sell such lands, the amount includes not only the past due taxes and costs, but also state and county taxes for the current year, provided the date of sale is subsequent to April 1st. To whom should the money collected by the Trustees covering the amount of the current year's state taxes be paid?

In answer to the above, I beg to say that remittances for the current year's taxes should be made to the State and county in the same manner that other moneys received on account of the sale are remitted under the provisions of Section 25 of said Act.

Your second question reads as follows:

2. It would appear necessary to furnish the purchaser with something as evidence that the current year's state and county taxes

have been paid. In this connection, when the Trustees remit to the county the amount of money due such county on account of county taxes, it is assumed that there is to be included the amount covering the current year's county taxes. Who should issue tax receipt for the current year's state taxes and for the current year's county taxes, or if not a tax receipt, what kind of evidence of current year's tax payments should be furnished the purchaser?

In answer to this question, I beg to say that such remittances may be evidenced by letter or any proper form of certificate to the purchaser. When the purchaser receives such evidence of the payment of the current year's taxes, he will be in position to exhibit the same to the tax collector for such entries as may be proper on the current year's tax roll, showing that the current taxes are no longer charged against the lands involved.

Yours very truly,

CARY D. LANDIS,
Attorney General.

UNIVERSITY OF FLORIDA
SCHOOL TEACHERS—APPOINTMENT

July 14, 1932.

Dear Doctor:

Your letter of June 25 addressed to the Honorable Fred H. Davis, has been referred to this office. You make inquiry with reference to nomination of teachers by Trustees of special tax school districts and appointments by the Board of Public Instruction.

In reply, I beg to call your attention to Sections 561 and 710, Compiled General Laws of 1927.

The first mentioned section provides for appointment of teachers by the Board of Public Instruction.

The second above mentioned section provides for nomination of teachers by the Trustees of special tax school districts.

Specifically answering your question number one, I beg to say that in my opinion the Board of Public Instruction would not be authorized to make appointment of teachers in special tax school districts before receiving nominations by the Trustees, provided such nominations shall be made within a reasonable time. If, however, such nominations should not be made by the Trustees or should not be made within a reasonable date, I think the Board would be authorized to make appointments.

Answering your question number two, I beg to say that in my opinion the Board of Public Instruction in rejecting nominations must act in good faith, but when they have done this the law does not seem to require them to give any reason for their action.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

XVII
OPINIONS, UNOFFICIAL
COUNTY OFFICERS

The following are a few of the opinions rendered by this office to county officers in various counties of the State which may be of interest to the public generally.

CLERKS CIRCUIT COURT

COSTS—CONSTRUCTION OF STATUTE IN RE WHERE NO IN-
DICTMENT FOUND

January 23, 1931.

Dear Sir:

This is in answer to your letter of January 20th on the above subject.

Section 8488, Compiled General Laws, provides that "whenever a committing magistrate holds to bail * * * and any information is not filed nor indictment found against such person, the cost of such committing trial shall not be paid by the county, *except the cost for executing the warrant.*"

The phrase "cost of executing the warrant" as used in the above Section embraces not only the bare cost of arresting the prisoner and making a return on the warrant, but embraces mileage and conveyance charge accruing to the Sheriff in connection with the arrest. It also embraces subsistence charges for feeding the prisoner while kept in jail, if he is unable to make bond.

In other words, in these cases the Sheriff who is not responsible for the issuance of an improper warrant, is entitled to his costs for apprehending the prisoner and keeping him in jail awaiting the action of the grand jury.

Yours very truly,

FRED H. DAVIS,
Attorney General.

COUNTY COMMISSIONERS—AUTHORIZED TO APPOINT ATTOR-
NEY FOR BOARD, ALSO PROSECUTING ATTORNEY

January 23, 1931.

Dear Sir:

I thank you for the information contained in your letter of January 19th with reference to the above subject.

The position of Attorney for the Board of County Commissioners is separate from the position of County Prosecuting Attorney, for the County Judge's Court, although there is nothing in the statutes which would pro-

hibit the County Commissioners from appointing one and the same attorney to perform both services.

In most of the counties the County Commissioners appoint a different attorney to be prosecutor for the County Judge's Court than they appoint as their own legal advisor.

The appointment of a Prosecuting Attorney for the County Judge's Court is made under Sections 2155 and 2156, Compiled General Laws. The compensation, etc., of such Attorney is fixed by that Act. The appointment of a County Attorney to advise the Board of County Commissioners is authorized by paragraph 3 of Section 2153.

As I have pointed out above, there is nothing to keep the Board from using the same Attorney for both purposes if it wishes to do so.

Yours very truly,

FRED H. DAVIS,
Attorney General.

SHERIFF—PAYMENT OF FEES FOR EXECUTING WARRANT WHERE NO INDICTMENT FOUND

February 3, 1931.

Dear Sir:

Answering the last paragraph of your letter of January 30th on the above subject, I beg to advise that even in cases where a warrant has been issued based on information furnished by the Sheriff, that the Sheriff is entitled to his fees for executing the warrant even though no indictment is found.

The Sheriff does not guarantee that every man he takes out a warrant for or places in jail will be indicted or convicted. In fact, it would be a bad precedent to expect the Sheriff to get a conviction in every case. The Sheriff is presumed to honestly administer the duties of his office, and when he in good faith swears out a warrant for a man and has him bound over to the grand jury, the fact that the grand jury does not consider the evidence sufficient to indict the man does not deprive the Sheriff of his fees for executing the warrant.

It would deprive the Judge of his fees because the Judge has power to not issue the warrant if he feels the case does not warrant it. Furthermore, where a Justice of the Peace or County Judge issues a warrant and releases the defendant on preliminary hearing, but does not bind him over to the grand jury, even he is entitled to his fees. It is only when he binds over to the grand jury and the grand jury fails to indict that he loses his fees. A ruling to the effect last mentioned was made by former Attorney General Thomas F. West in 1915, and has been followed ever since.

Yours very truly,

FRED H. DAVIS,
Attorney General.

PROSECUTING ATTORNEY—FEES AND METHOD OF APPOINTMENT

February 3, 1931.

Dear Sir:

The Prosecuting Attorney which is authorized and required by Section 2155, Compiled General Laws, is only for prosecuting "in or before the County Judge's Court." The statute does not apply to Justice of the Peace courts, and consequently the fee of \$5.00 provided by the statute cannot be collected on convictions had before the Justice of the Peace Court. It appears to me that this is quite clear from a reading of the statute.

From what I have said above, it is not to be understood, however, that the County Commissioners are without authority to employ an attorney for general purposes and to make it a part of his duties to prosecute cases before the courts of the justices of the peace. The point involved is that the special conviction fee of \$5.00 cannot be collected on convictions obtained before the Justice of the Peace.

Yours very truly,

FRED H. DAVIS,
Attorney General.

DELINQUENT TAXES—LAST ASSESSMENT VALUATION BASIS FOR COMPUTATION

February 18, 1931.

Dear Sir:

The only authority for collecting unpaid or omitted taxes upon the basis of the last assessed valuation of land is that found in Section 997, Compiled General Laws, a portion of which says:

"But where the last assessed valuation against any land to be redeemed or purchased is less than the regular valuation, then the last valuation shall be used."

Under our tax law there can be no valuation of land prior to April 1st in the tax books when they legally close. Consequently, where Section 997 applies at all it cannot apply until after the tax books for the current year have closed, so that the Tax Assessor can make at least a tentative valuation.

The courts have been holding with pretty general consistency that the law contemplates a uniform and equal assessment of taxes and of course this applies to taxes upon delinquent lands as well as upon lands which are not delinquent. While every consideration might make it advisable to settle with delinquent taxpayers upon most any basis which would bring the money, the fact remains that the tax authorities take a great risk when they depart from the letter of the law, and render the entire assessment of the county subject to being attacked by judicial proceedings for being discriminatory.

I am of the opinion that the 1931 valuation can be used as a basis for settling the subsequent omitted taxes after April 1, 1931, on a 1931 valuation, but not prior to that time. Even this may be doubtful, but the benefit of the doubt in the matter could be given to the person making the redemption without causing any serious complications.

Yours very truly,

FRED H. DAVIS,
Attorney General.

AMERICAN LEGION HOME—COUNTY COMMISSIONERS NOT
AUTHORIZED TO MAKE DONATIONS

March 7, 1931.

Dear Sir:

I regret to advise that I know of no legal way by which the County Commissioners could pay from county funds any sum whatsoever as a donation to an American Legion home.

The Constitution expressly prohibits donations of money to any private organization. In some instances appropriations have been made for purposes such as this out of county and city publicity funds, but the Supreme Court has held that such is not a proper publicity purpose.

Yours very truly,

FRED H. DAVIS,
Attorney General.

PRISONER—PROSECUTING COUNTY LIABLE FOR COST OF
MAINTAINING

April 18, 1931.

Dear Sir:

Replying to yours of the 16th instant, relative to compensation for feeding prisoners of other counties, would invite your attention to Section 8541, Compiled General Laws of Florida, 1927.

You will note that this Section Provides, "The county to which the prisoner charged or convicted is sent, or any officer thereof, is not required to incur or pay any expense or charge of maintaining such prisoner."

It is my opinion that whatever the cost is of maintaining such prisoner, it should be paid by the county who sends the prisoner to your county for safe keeping in your jail.

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

JUSTICE OF THE PEACE—DISPOSITION OF PAPERS FILED IN
CRIMINAL CASES

May 15, 1931.

Dear Sir:

Replying to your favor of the 13th instant, in which you make inquiry as to the proper disposition of papers that have been filed in cases before a Justice of the Peace and such cases have been disposed of, they being criminal cases, and peace proceedings where the defendant was required to give bond to keep the peace, I would state that I do not find any statute which specifically states where these papers should be kept; and, in the absence of such statute, it is my opinion that they should be kept in the records of the Justices of the Peace where they have been filed.

Very respectfully,

CARY D. LANDIS,
Attorney General.LIQUORS, SEIZED — CLERK CRIMINAL COURT OF RECORD
CUSTODIAN

May 15, 1931.

Dear Sir:

Replying to your favor of the 13th instant, in which you request my opinion as to who is entitled, under the law, to act as custodian of seized liquors in Palm Beach County, I would state that it is my opinion that the Clerk of the Criminal Court of Records in the County of Palm Beach is the legal custodian of seized liquors taken for use as a basis for criminal prosecution.

I reach this conclusion by consideration of Sections 7625-26-29, Compiled General Laws of Florida, 1927, together with Chapter 11363 of the Laws of Florida, Extraordinary Session, 1925, and Chapter 11982, Laws of Florida, Acts of 1927.

Chapter 11363, Acts of 1925, establishing the Criminal Court of Records of Palm Beach County, in Section 11 of said Act has the following provision:

"Such Clerk shall be the custodian of the dockets, books and records of said Court and shall have the same powers, duties and obligations now exercised by or imposed upon the Clerk of the Circuit Court in Criminal matters."

This same verbiage is carried in the amendatory act, Chapter 11969, Laws of Florida, 1927.

Construing these laws together, it is my opinion that the Clerk of the Criminal Court of Records in the County of Palm Beach would be the proper custodian of all seized liquors taken for use as a basis for criminal prosecution in that court.

Very respectfully,

CARY D. LANDIS,
Attorney General.

COUNTY JUDGES—FEES, CRIMINAL CASES

May 18, 1931.

Dear Sir:

Replying to yours of the 14th instant in which you ask to be advised if in my opinion the decision of the Supreme Court in the case of *Murphy vs. Harlee*, reported 131 So. 866, would have the effect of putting the County Judges on the same fee basis as Justices of the Peace, permit me to say:

Section 5204, Compiled General Laws, the same being 3351, Revised General Statutes, provides that fees to be charged by the County Judge shall be the same allowed for like services by law to Justices of the Peace. The Supreme Court in *Murphy vs. Harlee*, supra, held that fees of Justices of the Peace were not changed by Chapter 11893, Acts of 1927, and that the fees allowable to them are prescribed by Section 3084, Revised General Statutes. It would appear, therefore, that the fees which a County Judge may charge in criminal cases are those prescribed by Section 3084, Revised General Statutes of 1920.

We are advised that there have been bills introduced in the present session of the Legislature intended to make the fees of the County Judges and the Justices of the Peace the same as those allowed by law to the clerks of the courts under Chapter 11893, Acts of 1927, or as may be otherwise provided by law by subsequent acts of the Legislature.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MUNICIPAL PROPERTY—WHEN EXEMPT FROM TAXATION

June 8, 1931.

Dear Sir:

Your letter of the 4th instant received in which you ask to be advised whether certain municipally owned property, to-wit, light and water plants, hotel and land sold for city taxes, are subject to State and county taxes.

The Constitution authorizes the Legislature to exempt property for municipal purposes and the Legislature has, by Section 897 of the Compiled

General Laws of Florida, 1927, exempted all public property of the several municipalities used or intended for public purposes, except lands sold for municipal taxes. The highest courts of many of the states have held that municipally owned public utilities such as light and water plants are exempt from taxation under constitutional and statutory provisions similar to ours, and no doubt our court would hold the same view.

A hotel is not a public utility and cannot be said to be operated by a municipality in its governmental capacity and is not exempt under the Constitution and laws from taxation, even though it is owned by a municipality. Neither would the fact that the municipality itself operated such hotel exempt it from taxation.

Land sold for municipal taxes is excepted from the exemption to such municipalities and under the law is subject to State and county taxes.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX SALE CERTIFICATES—WHO ENTITLED TO REDEEM

June 25, 1931.

Dear Sir:

Replying to your favor of the 24th instant, I beg to advise that it is my opinion that only a person or agent of any person owning or claiming the lands sold for taxes, or any part or parcel thereof or interest therein, or the creditor of any such owner or claimant is entitled to redeem the same, and this redemption may be made and had at any time after such sale and before a tax deed is issued therefor.

You ask specifically whether or not a nephew of the original owner would be entitled to redeem the certificate before advertising for a tax deed, the nephew having no equity in the property or interest therein, the purpose of the nephew being to get possession of the certificate in order that he might advertise in his own name for tax deed. It is my opinion, that under the circumstances the nephew would not be entitled to redeem the certificate, and furthermore, when the certificate is once redeemed it is no basis for the issuance of a tax deed thereafter, the theory of the redemption being that it is a payment of the taxes.

Very respectfully,

CARY D. LANDIS,
Attorney General.

TAX EXEMPTION—PERSON LOSING ONE EYE NOT
ENTITLED TO

July 10, 1931.

Dear Sir:

This refers to your favor of July 9th, in which you request my opinion as to whether or not Section 897 of the Compiled General Laws of Florida, 1927, exempts from taxation up to \$500.00 a person who has had the misfortune of losing one eye.

The seventh Section of the statute you refer to provides such exemption to a person who "has lost a limb or been disabled in war or by misfortune." It is my opinion that the Legislature meant to state definitely that anyone who had lost a limb was entitled to this exemption, but where one has been disabled in war or by misfortune, it seems to me that it is a matter of determination by the taxing authorities to determine whether or not the misfortune is such as to disable the person in the making of a livelihood. This particular part of the statute, it seems to me, is really a matter of practical application. The loss of one eye, while it is bad enough, ordinarily would not interfere with a person's ability to earn a livelihood, and hence the fact of the loss of an eye, in my opinion, would not justify the granting of this exemption.

Very respectfully,

CARY D. LANDIS,
Attorney General.TAX CERTIFICATES—AFTER COMMENCEMENT OF SUIT PER-
SON CANNOT REDEEM OR PURCHASE A PART
THEREOF

July 21, 1931.

Dear Madam:

Replying to your favor of the 17th instant, in which you state that the Attorney of the Board of County Commissioners of your county has held that under the provisions of Chapter 14572, Acts of 1929, when a tax certificate has been turned over to an attorney for foreclosure and is in the process of suit, that person cannot redeem a part or purchase a part of such certificate.

Section 30-A of Chapter 14572, Acts of 1929, provides that the court may at any time order the separation of any suit to foreclose two or more tax sale certificates or tax deeds, if the ends of justice shall seem to require the same.

In view of the provision of the statute above quoted which makes a provision for separation where there is more than one certificate or deed involved, and finding no provision in the statutes for the redemption or purchase of part of a certificate, after suit has been started, it is my opinion

that the County Attorney is correct in his construction of the statute, and that a person should not be permitted to redeem or purchase a part of a certificate, after foreclosure suit has been instituted.

Trusting that you will find this to be satisfactory, I am,

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX CERTIFICATES—RIGHT OF PURCHASER TO HOLD OWNER
FOR FULL AMOUNT OF INTEREST AND FACE
OF CERTIFICATES

July 27, 1931.

My Dear Sir:

This is in response to your telegram of July 27th, as follows:

"Wire me collect if purchasers of tax certificates under Chapter 14572 can hold owners for full amount of interest and face of said certificates."

In reply thereto I wish to state that under Chapter 14572, Acts of 1929, the Clerk of the Circuit Court subsequent to the adjustment for taxes, and prior to July 1, 1930, or ninety days thereafter, as the case might be, was authorized to sell the tax certificate to an outsider for the adjusted amount of the taxes where the land-owner failed to take up the tax certificate within ten days, as provided by law. The sale was subject, however, to the same right of redemption in the taxpayer to redeem the same from the purchaser for the adjusted amount, plus interest during the time it could have been redeemed from the State for the adjusted amount, however, after this time limit expired, the holder of the tax certificate has the same right to demand the full amount, irrespective of the adjustment that the taxpayer would have had to pay to the State had the certificate not been sold.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

COUNTY PROPERTY—NOT SUBJECT TO LEVY AND SEIZURE TO
SATISFY JUDGMENT. HOW JUDGMENT MAY BE
ENFORCED BY MANDAMUS

July 27, 1931.

Dear Sir:

This will reply to your favor of the 25th instant in which you ask for an opinion on two questions of law as follows, to-wit:

1. Should a county's own trucks and other road equipment have an execution levied on this equipment?
2. If some of the equipment is being used and the remainder is in storage or not used by the county, can that part that is not in use be levied upon to satisfy the outstanding judgment?

In reply to your first question, permit me to say that a person holding a judgment against a county can enforce his judgment by mandamus to compel the Board to either pay the amount of the judgment from the fund against which the account would ordinarily be charged, or to require the Board to levy a sufficient tax to satisfy the judgment.

In reply to your second question, permit me to say that the courts do not permit creditors to seize and sell the property of a county to satisfy a judgment. See "Florida Common Law Practice," by Crandall, Page 851. Also

Klein vs. Hasley, 25 Ill. 485.

Chicago vs. Hasley, 25 Ill. 485.

It is a well settled principle of law that the public property of a county used in the orderly administration of governmental functions in and for the public interest cannot be levied upon and sold under execution, nor can a lien for a debt against it be enforced by foreclosure and sale, as such procedure would be against public policy, and would hinder and impair the administration of the governmental functions of the county.

See City of Grenada vs. Grenada County, 76 So. 682, 115 Miss. 831.

The law of Florida permits counties to sue and be sued, but as the court said in the case of Town of Grenada vs. Panola County, 76 So. 741, 115 Miss. 891:

"The mere authorization of a suit against a county does not necessarily imply a means of enforcing a judgment therein obtained, and where judgment is rendered it is the duty of the Commissioners to apply funds in the County Treasury, not otherwise appropriated, to its payment, or if there are no funds and they have the requisite power to levy a tax for that purpose, and if they have no funds and no power to levy a tax, it cannot be levied without express legislative authority."

In the case of the City of Sanford vs. Orange County, Florida, 54 Fla. 577, 45 So. 479, the court held that mandamus was the proper remedy for enforcement of the city's claim against the county, provided the city had a valid claim. See Ray vs. Wilson, 29 Fla. 342, 10 So. 613, 14 L. R. A. 773.

See also County Commissioners, Escambia County, vs. Pilot Commissioners, 52 Fla. 197, 42 So. 697, where the court said:

"When an expenditure by a county is authorized by a valid law, and the correctness of the amount due by the county is ascertained and approved as the law directs, there being no question as to bona fides, it is the duty of the County Commissioners to audit, approve, and pay the same, and such payment may be enforced by mandamus."

In view of the authority cited, it is my opinion:

1. That a creditor cannot levy upon and seize county property to satisfy a judgment.

2. That a valid judgment against a county can be enforced only by mandamus, and then only when it is within the power of the Board of County Commissioners to satisfy the judgment either by paying it from the fund from which like claims are usually paid, or by levy of a tax.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CONVICT GUARDS—BONDS REQUIRED

July 29, 1931.

Dear Sir:

Replying to your favor of the 25th instant in which you state that you have been requested by a member of the Board of County Commissioners of your county to write for an opinion relative to the necessity of captains and guards of county prisons giving a bond, permit me to say:

Section 8550, Compiled General Laws, requires that all county convict guards give bond in the sum of \$1,000.00 and that all captains or wardens give bond in the sum of \$2,500.00.

The statute is clear on this question, and there is no ground for disagreement between yourself and the County Commissioners or any member thereof, regarding the necessity of convict guards giving bond.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CANDIDATE—CERTAIN EXPENDITURES NOT AUTHORIZED

July 31, 1931.

Dear Sir:

Replying to your favor of the 29th instant in which you request an opinion from this office on the question of whether or not a candidate for either State or county office would violate the primary election law if he gave away balloons, whistles, pencils, and other novelties, to children only during a campaign, permit me to say:

Section 8182, Compiled General Laws, limits the purposes for which a candidate may expend money to the following items:

"For his traveling expenses while campaigning, fee for qualifying, stenographic work, clerks of his campaign, headquarters to address, prepare, and mail campaign literature, telegrams, telephone, postage, freight, express, stationery, list of voters, office rent, newspaper ad-

vertisements, advertising in campaign books, printing, and the renting of halls in which to address the voters."

You will note from the provisions above quoted that the expenditure of money for any other purpose than those purposes set out in the statute would be a violation of the law.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REGISTRATION BOOKS—SUPERVISOR AUTHORIZED TO TRANSFER NAMES TO NEW BOOKS

INQUEST—NECESSITY OF TO BE DETERMINED BY CORONER

August 19, 1931.

Dear Sir:

Replying to your favor of the 11th instant in which you ask to be advised what is necessary for an entirely new registration in your county and if parties wishing to maintain their legal status as electors in your county could be registered by affidavits, permit me to say:

Section 291, Compiled General Laws, provides that whenever it may be necessary the Supervisor of Registration of any county shall transfer and transcribe into new registration books from whatever registration books may be in possession of such Supervisor the names of all electors who appear upon said old books to be properly and legally registered electors thereon at the time of such transfer to three new books, taking care that the names of all electors shall be transcribed in the books of the election district to which such electors belong. See also Section 293, Compiled Laws of 1927.

We think under the provisions of the two sections referred to above you will find sufficient authority for making up what would amount to new registration books.

Replying to your second inquiry in which you ask to be advised as to when it is necessary to hold inquest, permit me to say this subject is covered by the provisions of Section 8520, Compiled General Laws, which reads as follows:

"Unless there shall appear to the satisfaction of the Coroner, after considering the circumstances attending the cause of death, that he has good reason to believe that the death was caused by the criminal act and negligence of another, no inquest shall be held, nor shall any compensation be allowed for a jury; and if in the opinion of the Coroner an inquest ought to be held he shall include the grounds for that opinion in the order for the jury."

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY COMMISSIONERS — AUTHORIZED TO DISTRIBUTE
FUNDS RECEIVED UNDER PROVISIONS RACING ACT

August 19, 1931.

Dear Sir:

This refers to your favor of August 13th, relative to Senate Bill No. 361 (Chapter 15787). Section 12 of this Act provides that:

"The 90% remaining shall be divided into as many equal parts as there are counties in the State and there shall be remitted one part to each county."

If you will read on you will find that Section 13 is as follows:

"When the moneys mentioned in the preceding Section have been transmitted to the County Commissioners of the several counties of the State in accordance with the provisions of this Act, the County Commissioners of the said several counties shall have the power and discretion to determine whether such moneys shall be converted into the county school fund, or to some other lawfully authorized fund or funds, or shall be equally or otherwise apportioned to any two or more of such funds."

You will see by this that the County Commissioners have the right to divert this money into the County School Fund or to some other lawfully authorized fund or funds as they may see fit.

It is my understanding that some of the counties undertook to control the disposition of these particular funds by what is termed general laws with local application.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CONSTABLE—NECESSARY PROCEDURE WITH REFERENCE TO
BOND AND COMMISSION

September 1, 1931.

My Dear Sir:

This refers to your favor of August 18th addressed to the Governor relative to bond of Constable in the sum of \$500.00, the particular Constable being Chas. A. McCrary.

You state that judgment has been rendered on this bond in the sum of \$499.99 because of a wrongful arrest by the Constable of Mr. F. M. Murphy. This, in my opinion, does not exhaust this bond, except to the extent of \$1.00, that is, assuming that the statutory bond of \$500.00 was given. This particular Constable should execute a new bond, or on failure or refusal to do so, the Governor should be promptly notified in order that his commission could be properly cancelled.

Very respectfully,

CARY D. LANDIS,
Attorney General.

ROAD AND BRIDGE TAX—CITIES AND TOWNS ENTITLED TO
ONE-HALF OF AMOUNT REALIZED ON PROPERTY
WITHIN CORPORATE LIMITS

September 16, 1931.

Dear Sir:

Replying to your favor of the 14th instant in which you state that the Lee County Commissioners have levied a tax of ten mills for the current year as a road and bridge tax, and in which you ask to be advised whether or not Lee County is required under the law to pay the cities and towns one-half of the amount realized from said road and bridge tax on the property incorporated cities and towns in said county, permit me to say:

Section 2453, Compiled General Laws, 1927, the same being Section 9 of Chapter 6537, Acts of 1913, requires that one-half of the amount realized from road and bridge tax on the property in incorporated cities and towns shall be turned over to said cities and towns.

Senate Bill 201-XX, the same being the tax levy act of 1931, authorized a levy for road and bridge fund of not more than ten mills on the dollar. The 1931 tax levy act did not repeal Section 2453, Compiled General Laws.

Therefore, it appears that Lee County would be required to pay to the cities and towns of said county one-half of the taxes realized from the road and bridge tax on the property in incorporated cities and towns of said county.

See *Pippin vs. State*, 73 Fla. 363, 74 So. 653.

Also *Dade County vs. City of Miami*, 77 Fla. 786, 82 So. 354.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY BUDGET—COUNTY COMMISSIONERS NOT AUTHORIZED TO ALLOW COMPENSATION FOR PREPARING

September 22, 1931.

Dear Sir:

Replying to your favor of the 19th instant, in which you ask to be advised whether or not the County Commissioners could allow you compensation for preparing and making the county budget, permit me to say:

Section 2302, Compiled General Laws, which makes it the duty of the Clerk of the Court as County Auditor to prepare the budget, does not provide for compensation.

Section 7486 makes it unlawful for a State, county or municipal officer to accept compensation or remuneration other than that provided by law. And Section 7487 provides rather a severe penalty for the violation of the statute.

Permit me to suggest that you read these two Sections.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—RETAIN TITLE CONTRACTS
REQUIRE

September 29, 1931.

My Dear Sir:

This refers to your favor of September 26th.

I would state that it is my opinion that the Retain Title Contracts must have a tax stamp attached; that all amounts up to \$200 must have a 10-cent stamp attached; \$200 and up to \$300 must have a 20-cent stamp tax; \$300 up to \$400 must have a 30-cent stamp tax, etc., etc.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—REQUIRED ON CERTAIN MORTGAGES

October 7, 1931.

Dear Sir:

Replying to your favor of the 6th instant, inquiring whether or not mortgages executed outside of the State of Florida, covering property located within the State, are liable for the documentary stamp tax, I beg to advise that it is my opinion that stamps are required to be placed on all such mortgages.

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

TAX CERTIFICATES—METHOD AND MANNER OF REDEMPTION
APPLICATION OF LAW

October 8, 1931.

Dear Sir:

Replying to your letter of September 29th, with reference to the manner of redeeming a part of tax certificates, permit me to advise that Section 994, Compiled General Laws of Florida, 1927, as amended by Section 11 of Chapter 14572, Acts of 1929, now appearing as Section 994 of the 1930 Supplement to the Compiled General Laws, authorizes and directs the Clerks

of the Circuit Courts of the several counties, to allow the redemption or purchase in whole or in part of all tax certificates held by the State, where the part to be redeemed or purchased can be ascertained by legal or usual subdivisions.

This applies, of course, only to tax certificates issued in the year 1918 and subsequent years. Using your illustration of where lots 1 and 2 were assessed together, and sold for non-payment of taxes, I think that you would be authorized and required to permit the redemption of either lot 1 or 2, but in no other manner. In other words, it must be redeemed as it is platted, or as it was platted at the time it was assessed.

The provisions of Section 994, apply only in case the certificate is held by the State. Where the certificate is held by an individual, Section 985 applies, and there is no right to sell, and the Clerk is not authorized to sell, and may allow redemption only by any person or agent of any person owning or claiming such land, or any part thereof, or any interest therein, or by creditor of any such owner or claimant, and in that case the redemption must apply to the entire interest of the party redeeming.

In other words, if the party redeeming owned the entire fee in all the land involved in the certificate, then he must pay all. That is the entire face of the certificates which covers all the land involved therein.

If he owns less than the entire interest, say for illustration, an undivided one-half interest in the land, then he may redeem one-half the certificate, but he must redeem the one-half of the entire tract embraced in the certificate.

Trusting this answers your inquiry, I am,

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—WHEN REQUIRED ON CERTAIN INSTRUMENTS

October 8, 1931.

Dear Sir:

Replying to your letter of September 30th, I beg to advise that there is nothing in Senate Bill 196-XX requiring documentary stamps on lis pendens notices, releases, or foreign judgments, and assignments of mortgages are required to have the stamp only when the mortgage carries the only evidence of the indebtedness secured by such mortgage. In other words, if there is a note or other written obligation to pay money secured by such mortgage, then the note or written obligation to pay money is itself subject to the tax, and the stamp would not be required to be put on the mortgage.

But if the mortgage itself is the only written evidence of the obligation to pay money, then the mortgage must have the stamp, and also the assignment would be required to have same.

Yours very truly,

CARY D. LANDIS,
Attorney General.

JURORS—ENTITLED TO MILEAGE

October 8, 1931.

Dear Sir:

Replying to your favor of the 28th ultimo, in which you state that the Judge of your Circuit Court at the end of each trial week, has always excused the jurors at that time for that term, unless actually serving on a case that has held over for the following week, but that recently, because of the general unemployment, he has told the jurors, upon finishing cases for the week, that if any of them desired to come back and serve the following week he would be glad to use them at that time instead of drawing a full venire, and in which you ask to be advised whether under this state of facts, the jurors returning the second week would be entitled to mileage, permit me to say:

Section 4473, Compiled General Laws, provides that jurors shall receive five cents per mile for every mile necessarily traveled in going to and returning from court by the nearest practicable route.

Therefore, it appears that jurors returning home over the week-end could legally be allowed mileage.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAXATION—PROPERTY LEASED BY COUNTY OR MUNICIPALITY NOT EXEMPT

October 10, 1931.

Dear Sir:

Replying to your two letters of October 7th, in which you ask to be advised whether or not property leased by the county or a municipality may be exempt from taxation, permit me to say:

It is my opinion that only property owned by the several counties, cities, villages, towns, and school districts in this State, used or intended for public purposes may be exempted from taxation.

If the property is privately owned and leased to the county or city, it is my opinion that it would be subject to taxation.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX REDEMPTION—VALUATION BASIS

October 12, 1931.

Dear Sir:

Replying to your recent letter with reference to my letter of September 24th to the Comptroller on a matter of redemption of taxes based on 1931 valuation, I beg to call your attention to the fact that I stated that when

the valuation for the year 1931 has been equalized, and as equalized adopted by the Board of County Commissioners, then such valuation may be used as the basis for redemption of taxes for previous years.

Of course, the 1931 valuations do not become in fact the valuations for taxation purposes until they are equalized and adopted by the Board for that purpose. But after the final adoption by the Board, then these values may be used by the Clerk as a basis for redemption.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES—IN RE TRANSPORTING LIQUOR INTO COURT ROOM AS
EVIDENCE

October 12, 1931.

Dear Sir:

Replying to your request for advice as to the fees you are entitled to for transporting intoxicating liquors into the court room for use in the trial of cases in the Criminal Court of Record, and for identifying the custody of such liquors, I am of the opinion that you would be confined to the fees allowed by law for witnesses.

The provisions of Section 4867 of the Compiled General Laws of Florida, prescribing fees per diem for attendance in court of \$5.00 and \$4.00 for his deputies, applies only to attendance in the Circuit Court of which he is the Clerk, and would not apply to any court where he is not the Clerk.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP ACT—REPORT TO COMPTROLLER
REQUIRED

October 14, 1931.

Dear Sir:

Replying to your letter of the 2nd instant with reference to the duty of the Clerks of the Circuit Court to make report to the Comptroller under Senate Bill No. 196-XX, I beg to advise that the clerks are required to report all the names and addresses of any and all individuals, firms, or corporations, who fail to affix the required amount of stamps to any conveyance or taxable instrument or docket recorded in their respective offices.

This only applies, of course, to those instruments which are recorded and which are required under the Act to have the stamps affixed.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX CERTIFICATES—METHOD AND MANNER OF REDEMPTION

October 16, 1931.

Dear Sir:

Replying to your letter of the 12th instant, I beg to advise that any person, or agent of any person, owning or claiming such lands sold for taxes, or any part or parcel thereof, or any interest therein, or the creditor of any such owner or claimant, may redeem the same at any time after such sale and before a tax deed is issued therefor, by paying to the Clerk of the Circuit Court of the county wherein such land is situated the face of the certificate of sale, or such proportion thereof as the part or interest redeemed shall bear to the whole, together with interest and the fee to the Clerk.

If a certificate is held by an individual covering lots one and two, the owner, agent or creditor cannot redeem the north fifty feet of said lots, but must redeem the entire interest of such owner to the entire lots. In other words, if a person owns the entire fee in said lots, then he must redeem all of the certificate, or if he owns an undivided one-half interest in lots one and two, then he may redeem as to his undivided one-half interest, as to the entire lots one and two.

Yours respectfully,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—AMOUNT REQUIRED ON MORTGAGE AND DEED

October 21, 1931.

Dear Sir:

This refers to your favor of October 20th, in which you enclose copy of letter to Mr. Amos and his reply thereto, and you propound the question as to the amount of documentary revenue stamps should be attached to a deed of conveyance where the deed is made in release of a mortgage.

It seems to me that the presumption would be the amount of the mortgage release, and upon which the documentary stamp tax should be figured, although the law has this provision:

"Provided that when the full amount of the consideration for the execution, assignment, transfer, or conveyance, is not shown in the face of such deed, instrument, document or writing, then in such event the tax shall be at the rate of 10 cents for each \$100.00 or fractional part thereof of the consideration therefor."

This clause seems to me to make it clear, and it would be only a question of practical determination of the value of this deed of conveyance.

It seems to me that if the deed does not show the full face of the consideration that then it is a matter of practical determination of what the deed of release is worth, or rather what the actual value of such deed is to the mortgagees, and then stamps to be attached accordingly.

You further ask a question with reference to a purchase money mortgage, that is a deed is given for a piece of property, but the consideration of the deed is one thousand dollars. This deed in my opinion must have attached revenue stamps for the full one thousand dollars, even though a mortgage is given for five hundred dollars of this consideration; and the note and mortgage must also bear the proper documentary revenue stamps, covering the amount of five hundred dollars.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

TAX CERTIFICATE—METHOD OF PURCHASING AND FORECLOSING

October 23, 1931.

Dear Sir:

This refers to your favor of the 15th instant, in which you request my opinion as to whether or not a party purchasing a part of a tax sales certificate is allowed to bring suit to foreclose a certain part without foreclosing the entire certificate.

The foreclosure of tax certificates is authorized by Section 13 of Chapter 14572, Acts of 1929, and inasmuch as this Act does not make any provision for the foreclosure of a part of a tax certificate, and for the further reason that it would be against principles of equity practice to split up a tax certificate, so that one certificate might be a basis of a number of foreclosure suits, I am of the opinion that suit cannot be brought on a part of a tax certificate.

Under Chapter 14572, it is my opinion that any person buying a tax certificate must buy the whole of the certificate, but under Section 992 of the Compiled General Laws of Florida, 1927, a party may buy a part of a tax certificate; and if one is the holder of a portion or a part of a tax certificate under this law, it is my opinion that he then could foreclose the portion of the certificate which he thus bought or purchased under said Section 992.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

TAX CERTIFICATES—CONSTRUCTION OF STATUTE

October 28, 1931.

Dear Sir:

It is my construction of Chapter 15791, Acts of 1931, known as the Gomez Bill, that at the time of the payment of the first installment of taxes all interest accrued thereon up to that time, shall be paid in addition to 20% of the face of the lien or certificate, and that the balance due on the lien or certificate bears interest from the date of the first payment.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES ALLOWED FOR MAKING REPORT TO COMPTROLLER OF
JURORS—HOW PAID

November 4, 1931.

Dear Madam:

Under Section 4867, of the Compiled General Laws of Florida, 1927, the Clerk of the Circuit Court is entitled to \$1.00 for making his report to the Comptroller of jurors, and 10 cents for certifying to such report, and these fees are payable by the county.

The matter of obtaining and handling Cash Pay-Roll for State witnesses before the grand jury is the same as that prescribed for jurors in the Circuit Court, and the Clerk's compensation is paid by the county.

Yours very truly,

CARY D. LANDIS,
Attorney General.DOCUMENTARY STAMPS—WHEN REQUIRED ON MORTGAGES
AND NOTES

November 18, 1931.

Dear Sir:

Replying to your favor of the 12th instant, enclosing letter from Mr. T. W. Miller on the question of the application of the documentary stamp tax to mortgages and mortgage notes executed prior to the effective date of the Act, permit me to advise that the stamps are not required on such instruments, unless they have been assigned or transferred since the Act has been effective.

Yours very truly,

CARY D. LANDIS,
Attorney General.FEES—COUNTY JUDGE OR JUSTICE OF THE PEACE ENTITLED
TO WHEN APPROVED BY COUNTY COMMISSIONERS

November 28, 1931.

Dear Sir:

Replying to your favor of the 17th instant permit me to say it is my opinion that if everything is regular in connection with the case before the County Judge or Justice of the Peace, and it develops that for good cause the case should be dismissed, the County Judge or Justice of the Peace is nevertheless entitled to his fees.

However, under the provisions of Section 2835, Compiled General Laws, the Board of County Commissioners are authorized to reject "all or any portion of any account which is not a valid claim against the county, and

they are authorized to approve an account only when it is just, correct and reasonable. And no constructive mileage or illegal or unnecessary item or charge in any frivolous case should be allowed." See *State vs. Macmillan*, 55 Fla. 246, 45 So. 882.

To hold that a trial judge is not entitled to his fees except in cases which go to trial, might tend to encourage the trial of cases which should properly be dismissed.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP—WHEN REQUIRED ON ASSIGNMENT OF MORTGAGE

December 4, 1931.

Dear Sir:

Replying to your favor of the 1st instant, in which you ask to be advised whether or not documentary stamps are required upon the assignment of a mortgage made to a trustee, securing notes which were made prior to the effective date of the Act, permit me to say the statute requires documentary stamps on the assignment of a mortgage, and if the assignment has been made since the effective date of the Act, it is my opinion the stamps would be required.

Replying to your second question as to whether or not stamps are required upon the assignment of a mortgage securing notes made prior to the approval of the Act, where the mortgage is not made to a trustee, permit me to say if the assignment has been made since the effective date of the Act, it is my opinion the stamps are required.

Replying to your third question, in which you ask to be advised whether or not in the assignment of mortgages as stated above, the stamps should be attached to the notes or to the assignment, permit me to say it is my opinion that if the notes were executed prior to the effective date of the Act, and the assignment of mortgage is made subsequent to the effective date of the Act, the stamps should be attached to the assignment of the mortgage.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LAKE HATCHENA—DECLARED TO BE IN POLK COUNTY

December 7, 1931.

Dear Sir:

Replying to your telegram of the 7th instant, in which you state that the Board of County Commissioners of your county want a ruling as to whether Lake Hatchena is in Polk or Osceola County, permit me to say:

I am advised that for purposes of allocating the gasoline tax based on

area, the Comptroller has declared Lake Hatchena to be in Polk County. Mr. Elliott, the State Engineer, advised that the Osceola County map in his office does not show this lake as being in Osceola County, and that the Polk County map does show it as being in Polk County.

The language describing the boundary of the county is not sufficiently clear to definitely locate the lake according to boundary. But inasmuch as the Comptroller is holding that Lake Hatchena lies in Polk County, such holding may be considered as being officially declared by one department at least.

Therefore, I will hold that the lake is within Polk County.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY COMMISSIONERS—NOT ENTITLED TO MILEAGE FOR
INSPECTION ROADS AND BRIDGES

December 14, 1931.

Dear Sir:

Replying to your favor of the 11th instant, in which you request me to give you my opinion on the question of whether or not County Commissioners are entitled to mileage for the inspection of roads and bridges, permit me to say the statute provides for a per diem for the inspection of roads and bridges by the County Commissioners, but does not authorize the charging of mileage for such services.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY OFFICERS—NOT AUTHORIZED TO PAY PRIVATE
AUDITOR FROM OFFICE FUNDS

January 1, 1932.

Dear Sir:

This refers to your letter of December 21, 1931, in which you make inquiry as to whether or not you are entitled to charge the cost paid out by you for private auditors out of the funds of the office, as an item of expense of the office, and, in reply, would state that it is my opinion that Chapter 11954 of the Acts of 1927 does not justify such payment.

It is my thought that the Laws of the State intended to require all officers to keep their books in such a manner as that no private auditing would be necessary.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—METHOD OF ESTIMATING AMOUNT

January 7, 1932.

Dear Sir:

Replying to yours of the 5th instant, permit me to say when a deed is given to property and the consideration is the cancellation of the mortgage, the documentary stamps would be based upon the amount of the mortgage.

Yours very truly,

CARY D. LANDIS,

Attorney General.

DOCUMENTARY STAMPS—REQUIRED ON LEASES

January 12, 1932.

Dear Sir:

Replying to your favor of the 7th instant, in which you ask to be advised whether or not the Documentary Stamp should be placed on a leasehold interest in real estate, such as turpentine or timber leases, and leases of filling stations, permit me to say that the statute requires stamps on leases covering this class of property.

Yours very truly,

CARY D. LANDIS,

Attorney General.

LEGAL NOTICES—PUBLICATION DEFINED

January 15, 1932.

Dear Sir:

Replying to your favor of the 11th instant relative to the publication of legal notices, permit me to suggest that you read Chapter 14830, Acts of 1931.

It is my opinion that where a newspaper is printed in one county and the copies thereof are shipped to another county in bulk, and mailed in the postoffice therein located to the subscribers thereto, this would amount to a publication of the paper in such county.

Yours very truly,

CARY D. LANDIS,

Attorney General.

COUNTY COMMISSIONER'S DISTRICT—TWO-THIRDS REGISTERED VOTERS IN DISTRICT REQUIRED TO SIGN PETITION FOR CHANGE OF BOUNDARIES

January 23, 1932.

Dear Sir:

Replying to your favor of the 15th instant, in which you request my opinion on the question of whether or not under Section 2150, Compiled General Laws, it is necessary to have a petition of two-thirds of the registered voters of each Commissioner's District, or two-thirds of the regis-

tered voters of the entire county where it is proposed to change the boundaries of the commissioners' districts, permit me to say:

It is my opinion that it is necessary to have a petition signed by two-thirds of the voters in each commissioner's district, and if two-thirds of the voters of any particular district do not sign the petition, the boundaries of that district cannot be altered.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—NOT REQUIRED ON GOVERN-
MENTAL BONDS

February 12, 1932.

Dear Sir:

Replying to your favor of the 9th instant, permit me to say documentary stamps are not required on governmental bonds, and this includes bonds issued by the municipalities of the State of Florida.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CANDIDATE—CONSTRUCTION OF STATUTE IN RE FEES RE-
QUIRED AND SWORN STATEMENTS TO BE FILED

February 6, 1932.

Dear Sir:

Replying to your favor of the 1st instant, permit me to say the Sections of the statutes referred to in your letter with the exception of Section 423 of the Compiled General Laws, 1927, have been amended by Chapter 13761, Acts of 1929. Therefore the information requested by you will have to be given under the 1929 Act.

Replying to your first question, permit me to say:

Section 4 of Chapter 13761, Acts of 1929, requires each candidate for nomination for office to be voted for by the electors of more than one county to file a sworn statement and receipt for committee assessment if any has been levied, and pay to the proper committee, and pay his filing fee as therein required to the Secretary of State not less than thirty days previous to the day of the first primary election, provided, that any candidate may pay such assessment as has been levied by the committee to the Secretary of State, who is authorized to accept the same and remit to the appropriate committee entitled thereto.

Section 5 of Chapter 13761 requires each candidate for nomination for an office to be voted for wholly within a single county to file a sworn statement and receipt for committee assessment, if any has been levied, with,

and pay his filing fee as therein required, to the Clerk of the Circuit Court, who shall receive the same in his capacity as Clerk of the Board of County Commissioners of said county, not less than twenty-five days previous to the day of the primary election.

Replying to your second question, permit me to say:

Section 15 of the Chapter above cited requires each and every candidate for nomination in the primary election to file in the office of the Clerk of the Circuit Court of the county in which he resides, if he is a candidate for State Senator, Representative in the Legislature, or for any county office or position or in the office of the Secretary of State, if he is a candidate for a National or State office or position, detailed itemized statements of his campaign expenses, not more than thirty days nor less than twenty-five days prior to the first primary election, also not more than twelve nor less than eight days prior to the first primary election, and within ten days after the second primary election. Therefore, this year May 8th would be the earliest date for the filing of the first statement, and midnight of May 13th would be the latest date.

May 26th would be the earliest date, and midnight of May 30th would be the latest date for filing the second statement.

The statute requires the last statement to be filed within ten days after the second primary election. The last day upon which the final statement after the second primary election could be filed would be midnight of July 8th.

Replying to your third question, permit me to say a candidate should file a sworn statement as required by Section 423, Compiled General Laws of 1927, whether he has any paid political workers or not. The statute permits a candidate to have paid political workers in his campaign headquarters, such as stenographers and clerks to mail out literature, but no other paid political workers are permitted under the law. And it is a violation of Sections 8182, 8185 and 8186 of the Compiled General Laws of 1927, for a candidate to have paid political workers, or for a person to accept pay as a political worker except as stated above.

All candidates, whether they have paid political workers as provided above or not, should file the sworn statement required by the Section mentioned, and if a candidate has had no paid political workers in his employment, his sworn statement would consist of the averment that he has had none.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES—IN RE CONSTRUCTION OF STATUTE

February 26, 1932.

Dear Sir:

Replying to your favor of the 22nd instant, in which you ask to be advised whether or not under Chapter 11893, Acts of 1927, which is an Act fixing the fees and compensation to be charged by the Clerk of the various

Courts of Record and the Clerks of the Circuit Court as Recorder, the Clerk of the Circuit Court may legally charge the county for furnishing a prisoner a copy of an indictment, permit me to say that said Chapter authorizes the Clerk to charge 25 cents for copying any record or paper for the first 100 words, and 12½ cents for each additional 100 words and fraction thereof.

It is my opinion that the statute authorizing the fees to be charged by the Clerk was intended to be authority to charge the public generally, and was not intended to apply to services rendered the county. However, if you should bill the county for copying indictments for prisoners and the county should pay the bill, it is my opinion that the transaction would be entirely legal.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COMMISSIONS—IN RE CONSTRUCTION OF STATUTE

March 2, 1932.

Dear Sir:

This refers to your favor of February 29, wherein you ask for a construction on that portion of Section 4867 of the Compiled General Laws, 1927, which reads as follows:

"Moneys received into registry of Court and paying out, first \$500.00, per cent, .01. Each subsequent \$100.00, percent, .00½."

Your first question is, "Is the commission earned when the money is received, or on each payment when it is paid out?" It is my opinion that the money is earned when and at the time the money is paid out. The commission is allowed for the total service of receiving and paying out and should only be treated as earned, and, therefore, only collected, as and when paid out.

Your second question is, "Is the commission of one-half of 1% to be charged on each full \$100.00 over \$500.00, or each \$100.00 or fraction thereof, or on the exact amount over \$500.00—for instance, if the total is \$750.00, should the commission be \$6.00 or \$6.50 or \$6.25?" It is my opinion that on the example which you give, on the first five hundred dollars, when it is received and paid out, the Clerk is entitled to 1% of the five hundred dollars. This leaves a balance of two hundred fifty dollars upon which a commission should be figured at one-half of 1%, or a total of \$1.25. Thus it is that on the example given, it is my opinion that the Clerk would be entitled to a commission of \$6.25. In other words, when you get over five hundred dollars, it is my opinion that you are entitled to one-half of 1% on the exact amount, whatever it is over the five hundred dollars.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BOARD COUNTY COMMISSIONERS—COMPENSATION

March 9, 1932.

Dear Sir:

This refers to your favor of the 7th instant. You call my attention to Section 2204 of the Compiled General Laws, 1927, which fixes the compensation of the County Commissioners, and inasmuch as you state that the per diem has a yearly limit in your county for each County Commissioner of \$200.00, I assume that your county has less than 15,000 population.

I note that two of your County Commissioners were authorized by the Board to secure right of way to State Road No. 39 in your county. I note further that one of your County Commissioners put in eighteen full days in this work of securing right of way deeds and that he billed the county for his services at \$6.00 per day. I note that your Board feels that this bill should not be charged against the per diem allowance by the statute which has the limit of \$200.00. The statute has this language in it:

"Provided, that the per diem herein provided shall apply to services rendered for inspection of public roads or bridges, or any other services authorized and approved by the Board of County Commissioners * * *."

It is my opinion that this service rendered in procuring deeds of right of way being authorized and approved by the Board of County Commissioners should be allowed, but it should be a charge against the total amount of \$200.00 that these Commissioners would be entitled to for the year's work.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—REQUIRED ON BILL OF SALE

March 9, 1932.

Dear Sir:

Replying to your favor of the 3rd instant relative to the question of whether or not documentary stamps are required on bills of sale, permit me to say the law dictionary defines a bill of sale as follows:

"A written agreement by which one person transfers his right to or interest in goods and personal chattels to another."

Under the definition as quoted above, documentary stamps are required on a bill of sale.

Yours very truly,

CARY D. LANDIS,
Attorney General.

VOTE—RIGHT NOT FORFEITED WHEN PERSONS RESIDE IN
PLACE OTHER THAN COUNTY IN WHICH PERMANENT
HOME AND DOMICILE ESTABLISHED

March 22, 1932.

Dear Sir:

This refers to your letter of March 19th, and if I understand the situation correctly your question is:

"If a man and his wife live in your county but in order to get work and make a living they had to go to another state, but that they did not move their household goods and that they always claimed your county their home or domicile, never intending to give up or change their domicile but only having moved away for the purpose of obtaining work, then whether these people would be entitled to vote in your county."

These facts as above stated would clearly indicate that this man and wife had retained their home and domicile in your county, and if they have complied with the poll tax and registration requirements in your county they would be entitled to vote in your county.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COSTS—WHEN JUSTICES OF THE PEACE AND COUNTY JUDGES
SHOULD REQUIRE IN ADVANCE

March 30, 1932.

My Dear Sir:

This refers to your favor of March 28, relative to Section 8490, Compiled General Laws, 1927.

It seems to me that the wording of this statute is clear and that it requires Justices of the Peace and County Judges in all cases to require payment in advance or security for costs of process service of the same and examination, unless the party applying for a warrant makes an affidavit of insolvency, and in addition to the affidavit of insolvency, an affidavit of special injury to person or property by him suffered. It is my opinion that this statute makes no exception, and that costs shall be required in advance, or security for the same provided in every case except that of insolvency and where there is injury to a person or property.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

CANDIDATES—FILING FEE REQUIRED

April 1, 1932.

Dear Sir:

This refers to your favors of the 21st and 30th ultimo, and in reply I would state that it is my opinion that the filing fee shall be based upon the annual compensation of the office at the time the candidate takes office. The statute speaks of it as being "the annual salary of compensation of the office sought by the candidate."

If in Volusia County the salary of the office is reduced to \$5,000.00 at the beginning of the term which would be occupied by the candidate, then it seems to me that the \$5,000.00 would be the basis of the assessment.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CANDIDATES—IN RE EXPENSE STATEMENT AND FILING FEES

April 6, 1932.

Dear Sir:

I have your letter of March 30, requesting my opinion as to particular dates for candidates to file statements of expenses, and also the particular date for candidates to qualify and pay their filing fee.

In reply to your inquiry, with reference to the date on which county candidates should qualify and pay their filing fee, I beg to say that the same is controlled by Section 387, Compiled General Laws, as amended by Chapter 13761, Acts of 1929. This Section provides that a candidate for nomination for office to be voted for wholly within a single county shall file a sworn statement and receipt for committee assessment, if any has been levied, and pay his filing fee not less than twenty-five days previous to the primary election.

Since our first primary for this year will be held on June 7th, such candidates should qualify and pay their filing fee not later than May 13.

Statements by candidates with reference to their expense accounts are controlled by Section 421, Compiled General Laws, as amended by Chapter 13761, Acts of 1929. This statute provides that candidates shall file three statements of expenses. The first not more than thirty days, nor less than twenty-five days, prior to the first primary; the second not more than twelve days, nor less than eight days, prior to the first primary; the third within ten days after the second primary. Under this statute, the first and last dates for the first statement are, respectively, May 8th and May 13th; the first and last dates for the second statement are, respectively, May 26th and May 30th; the last statement must be filed not later than July 8th.

You make inquiry in the latter part of your letter as to whether it is compulsory for a Clerk of the Circuit Court to stay around until midnight of the last dates for qualifying and filing expenses by candidates for their convenience.

In reply I beg to advise that I do not know of any statute requiring you to observe other than the usual office hours on these dates, but there is nothing to prevent you from remaining to twelve o'clock should you so desire, for accommodation of candidates.

You further make inquiry whether or not you are privileged to go wherever you wish after office hours, even if it should be out of the county or State.

In reply to this, I beg to call your attention to Section 4853 of the Compiled General Laws of 1927, which requires the Clerk of the Circuit Court, or a deputy, to reside at the county site or within two miles thereof. This statute contemplates that the Clerk of the Circuit Court, or a deputy, may be accessible at all times, and, in my opinion, you or some regular deputy known to the public, should be so accessible.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—AMOUNT REQUIRED ON CERTAIN
MORTGAGES AND DEEDS

April 7, 1932.

Dear Sir:

This refers to your favor of the 6th instant in which you ask this question:

"When a mortgage is foreclosed, say for \$5,000.00, the holder of the mortgage bids the property in at the sale, and the Master's deed shows the consideration as \$5,000.00. Does he have to put a \$5.00 stamp on the Master's deed?"

I have heretofore ruled that where the mortgagee bids in the property, that the actual reasonable value of the property should determine the amount of the revenue stamps, rather than the amount of the mortgage which was foreclosed, however, it seems to me that presumptively the amount of the consideration set forth in the Master's deed would be the presumed actual reasonable value, and it is my opinion that the full amount of \$5.00 in stamps should be attached to the deed. In other words, any such sum as \$5,000.00 being inserted would evidently indicate that the party had in mind that this was the fair actual value, or in the case of a Master's deed the amount that was necessary for the mortgagee to bid in order to obtain the property over other bidders who were present, able, ready and willing to bid.

You ask the further question:

"When property is deeded back to the mortgagor instead of being foreclosed, does grantor have to put full consideration of mortgage as basis for revenue stamps?"

I have ruled that it is not necessary to put the full consideration, for in such case it is probable that the property is not worth the face of the mortgage and in such case the deed should bear revenue stamps sufficient to cover the actual reasonable value of the land, which is deeded back to the mortgagor.

With assurance of my highest respect and kindest personal regards, I beg to be,

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

POLL TAX—WHO ENTITLED TO EXEMPTION

April 8, 1932.

Dear Sir:

This refers to your favor of the 4th instant, making inquiry as to the requirements for the payments of poll tax.

The only exemption from the payment of poll tax which I find is contained in Sections 910 and 2070, Compiled General Laws, 1927.

You will note that Section 2070 does exempt officers and enlisted men of the Florida National Guard from the payment of poll tax during their active service or membership.

The question of a veteran receiving a pension has nothing to do with poll tax exemption. A veteran who has lost a limb, or who has reached the age of 55 years is entitled to the exemption from poll tax, regardless of whether or not he was injured in the war. He is also entitled to an exemption if he was actually disabled in the war while in the Army or Navy service. The fact that a veteran was previously disabled, however, does not entitle him to this exemption, which is covered by Section 910 above referred to.

The fact that a man is drawing a pension, seems to me, would be practically conclusive that the pensioner was disabled in the Army or Navy service, and if so disabled in such service, he is then entitled to be exempt from the payment of poll tax.

It is my opinion that a soldier of the United States Army or Navy discharged after January, 1931, would be required to pay poll tax.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BOARD COUNTY COMMISSIONERS—CONSTRUCTION OF LAW
IN RE PAYMENT CERTAIN BONDS

April 11, 1932.

Dear Sir:

Section 18 of Chapter 14486, Laws of Florida, Acts of 1929, provides that any bonds issued by any county on special road and bridge district for the construction of any bridge and ferries for the use of which tolls are charged, shall be included in determining the amount of money to be allotted to such county under the provisions of said Act. But it is further provided that any sinking funds theretofore accumulated by such county from tolls, and any interest accrued thereon, and any tolls thereafter collected from such bridge, and any interest accrued thereon, shall remain the property of such county, and in the custody and control of the administrative board of such county having the custody and control thereof by law at the time of the enactment of said Chapter, and that such county administrative board may use and apply such funds as was then authorized by law, "or in lieu of any ad valorem tax to raise the amount, over the amount of the allotment herein provided for, required to meet all maturing principal and interest requirements of the bonds issued to construct such bridge."

As I construe these provisions of the Board of Administration Act, the Board of County Commissioners may exercise their discretion in paying the interest and/or principal of said bonds from the fund created by tolls, just as if said Act had never been passed, or they may place the same in the hands of the Board of Administration to be used by the Board of Administration in the payment of interest and principal on said bonds as other payments are made by said Board of Administration. Either course is permissible and legal, and it is only a matter of the Board of County Commissioners determining which they will adopt and pursue.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CONVICTS, COUNTY—AUTHORITY OF COUNTY COMMISSIONERS TO HIRE

April 12, 1932.

Dear Sir:

Answering your inquiry I beg to refer you to Section 8550, Compiled General Laws of 1927, for authority of the Board of County Commissioners to hire their county convicts to other counties. See also Section 2841.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX CERTIFICATES—CONSTRUCTION OF LAW

April 12, 1932.

Dear Sir:

I am in receipt of your letters of the 14th ultimo and the 11th instant, relative to Chapter 14572 of 1929 and 15787 of 1931.

Answering your first inquiry, I beg to say that when tax certificates are purchased under Section 42 of Chapter 14572 of 1929 for less than the face value the purchaser thereof may demand the full amount from a party seeking to redeem the same, and he is not required to accept only the purchase price paid by him with interest thereon.

Section 42 of Chapter 14572 of 1929 has been sustained by the Supreme Court in the case of Ridgeway vs. Peacock, 100 Fla., 1297; 131 So. 140.

Answering your last question, I beg to say that the documentary stamp tax, Chapter 15787 of 1931 does not in my opinion apply to transfer of State tax certificates from the State to an individual, nor to tax deeds from the State to individuals.

Very respectfully yours,

CARY D. LANDIS,

Attorney General.

TAX CERTIFICATE, REDEMPTION—PART OR INTEREST OF
VALUE, NOT AREA, TO BE CONSIDERED

April 14, 1932.

Dear Sir:

I have your letter of the 26th ultimo, stating that redemption of tax certificates is desired on about 1,200 acres of timbered lands scattered through a tract of some 38,000 acres of land assessed on the whole on a basis of \$1.50 per acre. You state that the timbered lands proposed to be redeemed consist of many small tracts of from two and a half to twenty acres of forty acre tracts. You also state that the timbered lands were taken into consideration in the assessment of the whole tract, and quote telegram from Hon. Ernest Amos, Comptroller, to the effect that you must determine the actual value of the part redeemed as compared with the balance in the tax certificate.

Answering your request for my opinion in the matter, I beg to call your attention to Sections 9 and 11 of Chapter 14572, Acts of 1929, amending Sections 985 and 994 of the Compiled General Laws of 1927. You will note that these sections provide for the redemption of the whole or a part of a certificate as the part or interest redeemed shall bear to the whole. In my opinion the part or interest redeemed may properly be construed as meaning the part or interest of value and not area. This interpretation is in line with the telegram from Hon. Ernest Amos, Comptroller, copied in your letter.

Since, as you state, the timbered lands were taken into consideration with reference to the assessment of the property, I think it is proper to take the same into consideration in redemption of timbered portions of the lands in question, and that in the proposed redemption of parts of the land you should determine the value of the parts proposed to be redeemed as the same shall bear to the value of all the lands involved.

Yours very truly,

CARY D. LANDIS,

Attorney General.

REGISTRATION BOOKS—REVISION REQUIRED

April 25, 1932.

Dear Sir:

Replying to your favor of the 22nd instant, permit me to say Section 297, Compiled General Laws, requires the County Commissioners on the first Wednesday after the registration books are closed to examine and revise the registration books of said county, erasing therefrom the names of all such as have died or moved from the county or from one district to another in the same county, who are otherwise disqualified to vote.

Yours very truly,

CARY D. LANDIS,

Attorney General.

CANDIDATES—GROUNDS OF DISQUALIFICATION

April 25, 1932.

Dear Sir:

Replying to your favor of the 22nd instant, in which you state that a man who was declared insane, and who has never had "his sanity restored" legally, has announced for Representative in your county, as to which you wish to be advised whether you should permit this man to qualify, permit me to say:

To be eligible to become a candidate for public office, a person must be qualified as an elector. Section 248, Compiled General Laws, 1927, provides that the following classes of persons are not entitled to vote:

First, persons not duly registered according to law.

Second, persons under guardianship, including those kept in prison.

Third, persons who are insane or idiotic.

Fourth, persons who have been convicted of any felony by any court of record, and who have not been restored to citizenship.

There are other grounds of disqualification in the same Section, which are too long to quote in this letter, but which you may ascertain by reference to the statute.

Yours very truly,

CARY D. LANDIS,

Attorney General.

EXECUTIVE COMMITTEES—CANDIDATES NOT REQUIRED TO
FILE EXPENSE STATEMENTS

April 26, 1932.

Dear Sir:

This refers to your favor of April 25th.

The statute does not require candidates for member of the various executive committees to file expense statements.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

ELECTION INSPECTORS—METHOD OF SELECTION AND TIME

May 23, 1932.

Dear Sir:

Replying to your favor of the 20th instant, permit me to say the selection, appointment, and advertising of election inspectors should be done at the time and in the manner required by statute. The courts presume that officers have acted in accordance with the provisions of law, and the burden is upon him who questions the acts of officers to show wherein the same are not conformable to statutory requirement.

Inasmuch as the time for selection, appointment, and advertising of election inspectors has expired, your Board could not now appoint election inspectors in strict compliance with the statute. However, if the Board should select additional inspectors to serve in those precincts where the qualified electors are so numerous that one set of inspectors is not adequate to serve the electors on the day of election, I doubt if anyone would question the result of the election on account of such fact. Whether or not your Board desires to assume the risk is a matter within your discretion.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CANDIDATE—CLERK CIRCUIT COURT AUTHORIZED TO ACCEPT
EXPENSE STATEMENT AT ANY TIME

June 2, 1932.

Dear Sir:

At the request of Mr. Calhoun, a candidate for County Commissioner of Wakulla County, I am writing to say that you as Clerk of the Circuit Court may accept the second expense statement offered by Mr. Calhoun at any time.

The statute makes it the duty of the Clerk of the Circuit Court to advise the County Commissioners the names of those candidates who have failed to file their expense statements within the time provided by law for the filing of the same, but the acceptance of an expense statement by the Clerk is only a ministerial duty, and the Clerk is not authorized to refuse to accept the statement at any time.

Yours very truly,

ROY CAMPBELL,
Assistant Attorney General.

LAW—IN RE POPULATION BASIS—CONSTRUCTION OF

June 22, 1932.

Dear Sir:

This refers to your favor of June 21st.

I note that you state the population basis set forth in Chapter 15762, Acts of 1931, makes this law applicable to your county, but that it was not advertised as is required for Special Laws. Unless and until this law is declared unconstitutional by a court of competent jurisdiction in a cause properly brought before it, you and all other administrative officers, including myself, should treat this law as in full force and effect. In other words, it is not within the functions of an administrative official to set aside a law, even though it may be doubtful as to its constitutionality. This is strictly within the sphere and jurisdiction of the courts.

You ask what would happen if this law were held unconstitutional by a court of competent jurisdiction. In that case, you would be governed by the provisions of the State Racing Act, which gives your County Commissioners the authority to use the racing funds by applying them to any one or more of the funds, as they see fit, and, therefore, they would be authorized under the Racing Act to pay all of your outstanding indebtedness, of each and every fund, out of the race track moneys before making any division with the School Board. In fact, the Racing Act does not require any of these moneys to go into the School Fund, or any other particular fund, but leaves this wholly within the discretion of your Board of County Commissioners.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

COUNTY COMMISSIONERS—AUTHORIZED TO CARE AND PROVIDE FOR THE POOR AND INDIGENT OF COUNTY

June 24, 1932.

Dear Sir:

I am in receipt of your letter of June 13, with reference to the authority of the Board of County Commissioners to take care of emergency cases and advising that the Board had not made sufficient provision in the "allowance to paupers."

Under the provisions of Section 2153, Compiled General Laws of 1927, the fourth paragraph authorizes the County Commissioners to have care and provide for the poor and indigent people of the county. If your budget allowance for this purpose has been exhausted, you will note that Section 2304, Compiled General Laws of 1927, provides for transfer of funds under certain conditions, and an emergency situation might be taken care of in that manner.

Very truly yours,

CARY D. LANDIS,
Attorney General.

TAXES—WHEN BONDS ACCEPTABLE IN PAYMENT

September 10, 1932.

Dear Sir:

This refers to your favor of September 8, enclosing resolution of the Board of County Commissioners as to accepting bonds in payment of taxes.

I am enclosing you a copy of Senate Bill No. 852, and you will see that this Act is applicable only to unpaid taxes that were levied for the year 1929 and prior years, and tax certificates therefor were issued and are held by the State, county, district or municipality subject to redemption.

The resolution which you enclose includes sales of August, 1932, and subsequent taxes held in connection with the certificates, and this is not permissible under the law. Furthermore, to comply with the law, it would only permit State, and county taxes to be paid by county-wide bonds and district taxes by district bonds and municipal taxes by municipal bonds.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

COUNTY OFFICERS—FEES UNCOLLECTED INURE TO OFFICE AFTER TERM OF OFFICIAL EXPIRES

October 5, 1932.

Dear Sir:

Under the ruling of the court in the recent case of Martin, Tax Collector, versus Karel, Sheriff of Orange County, it is doubtful whether any officer can collect any fees after his term of office expires, and he retires therefrom, for services rendered during his incumbency.

In the case just referred to, the court stated that fees collected by officers represented the charge which the State makes for services rendered by it through its officers and constitute a fund subject to the control of the State, such fees being the property of the State. It was further stated that a public officer has no estate in his office. It appears, therefore, that the

fees earned by an officer follow the office and that uncollected fees earned during the incumbency of one officer inure to the office to be collected and accounted for during the succeeding term.

If this is the correct interpretation of the law, it behooves each officer to collect his earned fees, insofar as it can be done, before he retires from office.

Very truly yours,

CARY D. LANDIS,
Attorney General.

TAX SALE—FEES FOR RECORDING

November 1, 1932.

Dear Sir:

Replying to your favor of October 29, permit me to say I have read Sections 976, and 5755 to 5758, inclusive, of the Compiled General Laws of Florida, and I have reached the conclusion that the only fees for recording the tax sale, for which the State is required to pay one-half, is that provided in Section 976 of the Compiled General Laws.

Sections 5755 to 5758, inclusive, provide for compensation which in my opinion should be paid for entirely by the County Commissioners. You will observe that Section 5758 has the following provision:

"Whenever the said Board of County Commissioners deem it advisable, they shall have abstracted any or all of the tax sales relating to any real estate situated in the county. This shall be done under the supervision of the Clerk, who shall receive a monthly compensation for himself or deputy, or deputies, not to exceed seventy-five dollars per month during the performance of such services."

Very truly yours,

CARY D. LANDIS,
Attorney General.

TAX DEED—HOW OBTAINED

November 4, 1932.

Dear Sir:

Replying to your favor of the 1st instant, permit me to say under the provisions of Section 12 of Chapter 14572, Acts of 1929, which amends Section 779, Revised General Statutes, 1003, Compiled General Laws, it appears that the holder of any tax certificate at any time within two years after the date of its issuance, may obtain a tax deed to the land therein described by application to the Clerk of the Circuit Court of the county wherein such

land is situated, as provided by law, and the surrender of such certificate and payment to the Clerk of the proper amount for the redemption or surrender of all other outstanding subsequent certificates covering said land.

Under the provisions of the statute, it appears that if the applicant for tax deed pays to the Clerk the proper amount for the redemption or surrender of all outstanding tax certificates issued subsequent to the date of the certificate upon which application for tax deed is applied for, he would be entitled to a tax deed on the land covered by the tax certificate. However, unless all prior taxes are paid and such unpaid taxes are evidenced by tax certificates held by the State or individual, such tax certificates would be a lien on the property unless foreclosed in a proper proceeding.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX REDEMPTION—OWNER MAY REDEEM PART OF TRACT

December 7, 1932.

Dear Sir:

This refers to your request for my opinion on the following facts:

I understand that a certain 640 acre tract of land in your county has been assessed to the owner as one parcel at a specific amount in value; that the taxes have been unpaid; that this land has been sold and tax certificate issued. That the tax certificate has been purchased and application made for tax deed, and that in due time before the issuance of the deed the owner applied to redeem 440 acres of this land. The question then arises as to what the owner shall be charged for making such redemption.

The law provides that any owner may redeem either the whole or any part of the land under such circumstances, where the part sought to be redeemed may be ascertained by legal and usual subdivisions. Clearly 440 acres can be ascertained by the legal and usual subdivision of 40 acre tracts, and inasmuch as the whole 640 acres was assessed in one amount, there is no machinery under the law by which you can fix a different value on any particular part of the 640 acres, and you are required under the law, in my opinion, to permit the owner to redeem the 440 acres on the proportionate amount the 440 acres bears to the 640 acres. I realize that some one or more of the 40 acre tracts might actually have a greater value than another 40, but inasmuch as the whole has been assessed as a whole for a given amount, there is no way for you to make such distribution, and redemption should be allowed on the proportionate part of the amount redeemed as it bears to the whole.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CRIMINAL COURT OF RECORD, CLERK

DOCUMENTARY STAMPS—OBLIGATIONS TO PAY MONEY
REQUIRE

October 23, 1931.

Dear Sir:

This refers to yours of the 5th instant with reference to whether or not documentary stamps should be attached to surety bonds, Appearance and Supersedeas Bonds for the Criminal Court of Record.

It is my opinion that these are obligations to pay money, and come within the terms of Section 1 of Chapter 15787, Laws of Florida, Acts of 1931, and therefore should have the proper amount of stamps affixed.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CONSTABLES

FEES—CONSTRUCTION OF STATUTE

July 7, 1931.

Dear Sir:

Replying to your favor of the 3rd instant, permit me to say Section 4538 of the Compiled General Laws prescribes the fees allowed the sheriffs of the several counties. Senate Bill No. 126, which became a law June 6th, 1931, provides that the constables' fees shall be the same as those allowed the sheriff for like services, therefore, the constables' fees at this time would be those prescribed by Section 4535, Compiled General Laws.

Of course, you understand there are certain duties prescribed in the statute which the constable does not perform. Under the law the constable is not permitted a fee for writing, taking and approving bonds or for commitment of prisoner to jail or for re-commitment under order or for release of prisoner, because the statute does not authorize the constable to perform the duties above stated.

Yours very truly,

CARY D. LANDIS,
Attorney General.JUSTICE OF THE PEACE—CONSTRUCTION OF STATUTE IN RE
AUTHORITY TO APPOINT—SPECIAL CONSTABLE

September 3, 1931.

Dear Sir:

Replying to your favor of the 31st ultimo in which you ask to be advised regarding the power of a constable appointed under the provisions of Section 5221, Compiled General Laws, permit me to say we construe this sec-

tion to authorize the justice of the peace to appoint a person to serve summons in civil procedure when the constable or sheriff is not available. We do not construe the section to authorize a justice of the peace to appoint a special constable with authority to make arrest.

Replying to your second question, permit me to say we know of no statute authorizing a city policeman to collect fees from a justice of the peace court where such policeman arrests a person and takes such person to the court of the justice of the peace for trial or preliminary hearing.

Permit me to suggest that if you wish further information regarding this or any other subject of a like nature that you take the matter up with your county attorney.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES—QUESTIONS ANSWERED

October 8, 1931.

Dear Sir:

Replying to your favor of the 2nd instant, in which you ask five specific questions regarding the fees to which constables are entitled, permit me to say I will repeat your questions numerically and answer each one separately:

Question 1. Is the arresting officer entitled to the same fee in executing a warrant if the case is dismissed by the Justice of Peace or County Solicitor as he is if the County Solicitor files an information on the case?

Answer: Yes.

Question 2. Is the officer entitled to a \$1.00 commitment fee if he makes an arrest and does not take the prisoner to jail but takes the prisoner to his Court and the prisoner makes bond?

Answer: No.

Question 3. If an officer has a complaint that a place is engaged in the liquor traffic and investigates and secures sufficient grounds for a search and finds nothing, what fee is he allowed for making such search?

Answer: None.

Question 4. If an officer makes an arrest and the charge is larceny and the man so charged tells the arresting officer that he will show him where the stolen goods are and the officer takes the prisoner with him to the place the prisoner claims the stolen goods are located, and the stolen goods are to be used as evidence for the State against the prisoner, is the officer entitled to mileage on that trip?

Answer: Yes.

Question 5. If an officer has a warrant from his court to be served on a defendant and the warrant has the proper address of the defendant and the information sufficient to prove that the defendant can be located

at this address and the officer goes to said address and the defendant is not there but will be there at a later time and the officer makes several trips to apprehend the defendant before he is able to place him under arrest, is the office entitled to the mileage actually traveled trying to apprehend the defendant, that is the previous trips made to the defendant's home before finding the defendant there?

Answer: No.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SLOT MACHINES—IN RE OPERATION AND PROCEDURE FOR
SEIZURE AND DISPOSITION

October 28, 1931.

Dear Sir:

I am in receipt of your letter of the 26th instant, making inquiry as to the law governing the operation of slot machines and the procedure for seizure and disposition of the same.

Chapter 14,491, Laws of Florida, Acts of 1929, in Section 19 (e) fixes the State license tax on vending machines at \$15.00 and the County license tax, in addition thereto, to be \$7.50 plus the fees of the officer issuing such license.

The Constitution and laws of this State prohibit the operation of any kind of a slot machine which contains an element of chance in its operation, but otherwise it is not against the law to operate slot machines which are purely vending devices for merchandise, such as chewing gum and the like. When, however, any element of chance is introduced into the machine, it is against the Florida law.

Sections 7664 and 7665 provide for search and seizure of gambling devices. I would suggest, however, that it would be better to proceed under a warrant.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PRISONER—IN RE RETURNING FROM ANOTHER COUNTY

December 14, 1931.

Dear Sir:

Replying to your favor of the 12th instant, permit me to say former Attorneys General, including my most recent predecessor in office, Hon. Fred H. Davis, now a member of the Supreme Court, have held that a Constable is authorized to go beyond the limits of his County and to go into another State to return a person charged with crime when the Constable has been given a warrant by the Justice of the Peace of the District in which he is

Constable. However, it would be unwise for a Constable to attempt to return a person charged with crime from another State unless he had procured requisition papers from the Governor of the State of Florida, and the Governor does not issue a requisition unless the application therefor has been made and signed by the State's Attorney, County Solicitor or County Prosecuting Attorney.

Yours very truly,

CARY D. LANDIS,
Attorney General.

JUSTICE OF PEACE DISTRICT—COUNTY COMMISSIONERS
AUTHORIZED TO CONSOLIDATE

December 15, 1931.

Dear Sir:

Replying to your favor of the 10th instant, permit me to say Section 5212, Compiled General Laws, authorizes the county commissioners in all counties where there shall be any justice of the peace district in and for which no justice of the peace shall be elected, qualified or commissioned, to attach the territory of such justice of the peace district to the territory of some adjacent justice of the peace district which has a justice of the peace, and make it a part thereof by an order to be recorded in the minutes of the proceedings of such county commissioners, and such territory shall thereafter, unless otherwise ordered by the board of county commissioners, be considered as part of the justice district to which it has been attached, and a copy of the order making the consolidation shall be posted at the courthouse of the county.

In view of the language above quoted, it seems to me that the whole question of the county commissioners' authority depends upon whether or not at the time the consolidation is ordered, there is a person elected, qualified or commissioned to be justice of the peace in the district to be consolidated.

The statute does not mention the constable. Therefore, the fact that a constable had been elected, qualified or commissioned for the attached territory having no elected, qualified or commissioned justice of the peace, would not prevent a consolidation.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY ATTORNEYS

TAXES, SPECIAL ROAD AND BRIDGE DISTRICT—WHEN ONE-HALF TO BE PAID TO CITIES AND TOWNS

January 26, 1931.

My Dear Madam:

While Section 2453, Compiled General Laws, requires the board of county commissioners to pay over one-half of the amount realized from special road and bridge taxes levied on the property in incorporated cities and towns to such cities and towns, the courts have all held that if the county has expended the money and is not able to turn it over, that mandamus will not lie to compel it.

I do not remember the particular news article you refer to, but it probably had reference to the statutory requirement that claims against the county commissioners should be presented within one year or they were barred. See *Hillsborough County vs. State*, 57 Fla. 50, where such defense was raised but not passed upon by the Court.

Yours very truly,

FRED H. DAVIS,
Attorney General.COSTS—IN RE CASES PROSECUTED BEFORE JUSTICES OF THE
PEACE—REQUIREMENT OF PRE-PAYMENT UNDER
SECTION 8490

January 29, 1931.

Dear Sir:

Section 8490, Compiled General Laws, requires the "party" applying for a warrant before a justice of the peace or county judge to make an affidavit of substantial injury to person and property by him suffered, together with an affidavit of insolvency unless payment in advance or security for costs is furnished by such "party."

When the case of *Simmons vs State*, 71 Fla. 340, was before the Supreme Court, it was urged that the statute was unconstitutional, because it violated that provision of the Constitution (Section 16, Article IV) which requires the legal cost and expense of criminal prosecutions, including the fees of persons, to be paid by the county in which the crime was committed in all cases where the defendant is insolvent or discharged.

The Court avoided holding the statute unconstitutional by deciding that in the particular case involved the statute was not applicable where a public offense was charged and an affidavit sought by an officer of the law, who charged a public offense. The later case of *Barrow vs. State*, 77 Fla. 773, throws some light on the question as to what may be considered a public or "private" offense within the meaning of Section 8490.

It appears to me that the distinction intended to be drawn is that every case is to be considered to be within the terms and requirement of Section

849, Compiled General Laws, where a private individual not an officer swears out a warrant against another, charging some criminal offense which involves an injury to the person or property of the affiant.

However, when warrants are sworn out by officers of the law such as constables, deputy sheriffs, and sheriffs, it seems to me that the terms and provisions of Section 8490 are not applicable, and that the offense charged must be deemed a public one falling within the Simmons case.

I take this to be true because Section 8490 requires the party applying for the warrant to make an affidavit of injury to persons or property by him (the affiant) suffered. It would therefore appear that the terms of the statute are limited to those cases where warrants are sworn out by the person whom it is alleged in the warrant has suffered some injury to person or property by the commission of the crime charged, but not to cases where the affidavit is sworn out by some person not connected with any injury to person or property alleged, and whose only motive for swearing out the warrant must necessarily be a public motive in enforcing the general criminal law by instituting the prosecution.

It appears to me that this construction of the statute would avoid the question of constitutionality and would also carry out the terms of the Act itself. Section 8490 can certainly not apply in terms to any offense charged, where the affiant by reason of his lack of connection with the offense charged would be unable to make the required affidavit of injury to person or property, because of his lack of interest.

The foregoing is the only distinction that I am able to draw when considering the statute in connection with the Supreme Court opinions referred to.

Yours very truly,

FRED H. DAVIS,
Attorney General.

COUNTY OFFICERS—CONSTRUCTION OF STATUTES IN RE REPORTS

January 29, 1931.

Dear Sir:

The form of report made by Hon. W. A. Keen, Sheriff of Sarasota County, which was enclosed with your letter of January 27th regarding the above subject, appears to have been made and filed by the sheriff under Section 472, Compiled General Laws, which is a separate and different statute from Chapter 14502, Acts of 1929.

Section 472 is an old statute passed in 1915 which requires reports of county officers to be made to the Comptroller. The reports required by Section 472 are to be made upon forms prescribed by the State Comptroller and are only required to show in a general way the source, character and amount of official receipts and expenses, and the net amount that the office has paid up to the time of making the report.

It would appear to me that insofar as Section 472 is concerned that construing said Section in connection with the form of report prepared by the Comptroller to be made by county officers, that the report of Sheriff Keen while general in its nature is a sufficient compliance with Section 472.

However, Chapter 14502, Acts of 1929, which is a separate statute, requires that each county officer shall file with the board of county commissioners a sworn *itemized* statement showing *in detail* the fees and commissions collected by him, together with an *itemized* statement showing the expenses of his office, to whom compensation of any kind is paid, and the purposes thereof, giving in said report the names of all clerks, deputies, servants, agents, employees, or other persons, firms or corporations who are paid any moneys whatsoever out of the funds received from any source by said county official, the amounts so paid *and when*, and the gross and net income of the office, which report is required to be recorded in the minutes of the Board and also sent to the State Comptroller.

This later report is a separate and distinct report from that required by Section 472, and is required to be sent to the Comptroller as well as filed with the Board of County Commissioners.

Section 1 of Chapter 14502 apparently recognizes this fact, because it contains a provision which says "provided that nothing herein contained shall relieve any such official from making reports to the State Comptroller as now or may hereafter be required by law." This proviso evidently refers to the general reports required by Section 472, Compiled General Laws.

The effect of Section 1 of Chapter 14502 is to require county officials to *keep books* showing in detail every dollar taken in by such officials and every dollar paid out, together with the time, place and circumstance of payment. This is evident from the fact that a sworn *itemized* statement is required to be filed with the county commissioners. A sworn *itemized* statement could only be truthfully made up and filed when based upon *records* kept of the transactions reported.

However, insofar as the report itself is concerned it appears to me that it was only intended that the report should show in a general way a summary or recapitulation of the various amounts collected, and the various amounts paid out, *itemized* as to source from which received and persons, firms and corporations to whom paid.

Insofar as sources of revenue are concerned, it appears to me that the report submitted by Sheriff Keen is entirely sufficient to comply with the statute, in that it shows the total amounts received from each branch of work done by the Sheriff's office during the preceding six months.

Insofar as report of expenses shown is concerned it would appear that more detail is required in order to comply with the 1929 statute, particularly with reference to the salaries paid deputies and clerks, which appear to be stated in the aggregate and not separately as to each. One of the main purposes of the 1929 law was to require county officers to

give the names of each person employed and paid compensation by them, and to have the compensation paid to each stated separately in itemized form.

With the foregoing exceptions as to itemizing the salaries of the persons employed, it appears that the report submitted by Sheriff Keen is acceptable.

The law only requires that such statement be given in the report submitted by the county official as will enable the county commissioners or the State Auditor to take the report and check it with the books of account which the county officer must necessarily keep, showing the various items in order to enable him to truthfully make a sworn itemized report at all.

I am sending you with this communication copy of another letter written by me about a year ago on this same subject, which goes into another phase of the statute.

Yours very truly,

FRED H. DAVIS,
Attorney General.

COUNTY DEPOSITORY — CONSTRUCTION OF LAW IN RE
REQUIREMENT FOR INTEREST PAYMENTS— SURETY
BONDS AUTHORIZED

February 4, 1931.

Dear Sir:

Section 2405, Compiled General Laws, provides that any bank which desires to become a county depository shall file with the Board of County Commissioners a written offer and guarantee to pay said board two per cent per annum on all daily balances, when the funds on deposit with them shall exceed \$2,000, and four per cent per annum on time deposits, and shall execute and deliver to the board proper security for the moneys deposited to insure the safe keeping and accounting therefor.

The statute contains a proviso to the effect that the county commissioners shall divide the deposits of their counties equitably among the banks of the county that have qualified as provided by law, and in case no bank in the county shall qualify that then the boards are authorized and *commanded* to divide the deposits among the banks meeting the conditions provided in this section.

In some of the counties of the State as in your county, the banks owing to financial conditions have found it impossible for them to agree to pay the required per cent. As a result, the county commissioners in such counties are unable to comply with the provisions of the law without attempting to go into other counties to seek places for the deposit of county moneys, which will meet the requirements of the statute. This brings up the question as to what shall be done when no bank in the county shall pay the required interest, and whether or not the board is authorized to agree to pay less than the required interest in the event that no one will give the security or make a bid to become a county depository as provided by the law.

I have previously given it as my opinion that the Board of County Commissioners of a county has sufficiently complied with the law when they endeavor to secure the required interest on deposits, and having failed to secure any offers to pay such interest, have thereupon proceeded to designate a depository in the county under an agreement by which the board agrees to accept less than the statutory amount of interest.

Where a Board of County Commissioners fails to receive any offer from any bank to pay the statutory rate of interest, I find nothing in the statute which requires them to be without a depository, or which prevents them from proceeding to designate some bank as a depository on a basis of less than the required statutory per cent, so long as they are unable to get the statutory per cent after endeavoring to do so.

Insofar as security required to be furnished by county depositories is concerned, I am of the opinion that a surety company bond is as much authorized as would be the deposit of collateral. This is expressly authorized by Section 2404, Compiled General Laws.

Under the provisions of Section 6079, Compiled General Laws, the Comptroller is authorized to designate a State bank as a depository for public money, and to require such company to give certain satisfactory security for the safekeeping of such money generally, in which event the bank in question may be considered as a general authorized depository. However, the last mentioned Section appears never to have been followed out in practice in Florida.

Answering your specific inquiry contained in your letter of January 31st, I am of the opinion that while the county commissioners have no right to entirely waive the requirement that interest be paid under Section 2404, that they would have the right to make a contract for a less rate of interest in the event that they are unable to obtain the statutory rate. However, such contract could only be carried out for that period of time during which the commissioners were unable to make any better bargain.

Yours very truly,

FRED H. DAVIS,
Attorney General.

CLERK CIRCUIT COURT—PAYMENT OF PER DIEM FOR COURT ATTENDANCE

February 10, 1931.

Dear Sir:

The general statutes of the State prohibit the payment to any officer of fees for constructive services only. I am therefore of the opinion that it would be unlawful to pay the clerk of the Circuit Court a per diem for court attendance unless he actually renders the services for which the fee is claimed.

Of course, if the clerk of the Circuit Court actually attends the Court for a substantial part of the time, the fact that he gets excused to attend to

other duties during the course of a day would not necessarily defeat his right to claim the per diem, any more than it would defeat the Sheriff's right to claim his per diem for court attendance merely because he sent his deputy out to serve a paper on the street during the course of a court session.

The law contemplates that the clerk shall be in active attendance upon the Court in person during a substantial portion of the time the Court is in session, in order to entitle him to claim his per diem.

Yours very truly,

FRED H. DAVIS,
Attorney General.

TAXES, PERSONAL PROPERTY—METHODS OF ENFORCEMENT OF COLLECTION

February 19, 1931.

Dear Sir:

Under Section 745, Compiled General Laws, all taxes assessed upon either real or personal property from the date of the assessment have all the force and effect of a judgment in execution of law against the owner of such property.

In a recent case tried in the Circuit Court of Duval County, which is now on appeal to the Supreme Court, it was ruled by the Circuit Court that under this section the Tax Collector had the right to levy upon and sell real estate to satisfy a personal property tax assessment. Under Section 942, Compiled General Laws, a form of tax warrant is provided under which the Tax Collector is authorized and directed to collect the amount of taxes "set down in each roll opposite each name."

This would seem to indicate that if the Tax Collector shows the name of the person assessed, that he is assessed for personal property, and the valuation thereof, that the assessment of taxes for personal property will be enforceable against the delinquent taxpayer, regardless of whether the property is specifically described on the tax roll or not. Ordinarily, it will be sufficiently described on the tax roll, because the roll is prepared in a form which coincides with Section 914.

The purpose of Sections 955 and 956 is to authorize Tax Collectors to enforce collection of personal property taxes through deputies to whom he could turn over special tax warrants for the collection of the taxes.

The method provided by Sections 955 and 956 is not exclusive, but is simply a method by which the Tax Collector can perform his duties by delegating a portion of the duty to authorized deputies who might proceed in a summary way, rather than have the taxes collected by the Tax Collector directly under other provisions of the law.

Under Section 913, Compiled General Laws, the taxes on real estate may be collected out of personal property, and the taxes on personal property

may be collected out of real estate, because both are responsible for the taxes assessed against the owner thereof.

I think your statement as to the method by which a levy must be made is correct, and that it is necessary for the Tax Collector to take into his possession *or control* property levied upon. At the same time, I think that in the case of boats and property of that kind, which cannot be readily moved, the levy can be made by the Tax Collector in exactly the same manner that it could be made by the Sheriff, and that is by taking "control" of the property in such way as to exclude the owner from it and to enable the Tax Collector to make delivery in the event of a sale.

It has generally been held that property which is not readily portable may be levied upon by officers under legal process without actually removing it from the place where it is located, so long as the owner of it is divested of his actual possession and control. This procedure has been upheld in several of the Circuit Courts of the State. There is one thing certain—a writ of replevin will not lie to recover back property seized under a tax claim. The only remedy is an injunction, and even when an injunction is resorted to it is necessary that the taxpayer tender into court and offer to pay the amount of tax which might have lawfully been assessed against him, even where the assessment is admitted to be valid in form.

In the recent Harjim case, decided by the Supreme Court, 129 So. 918, the Supreme Court definitely ruled that before a bill in equity to enjoin the tax sale would have any status at all for the purpose of hearing on a temporary injunction or otherwise, it would be the duty of the complainant to tender into Court *any* pay the amount of tax which the Court might find to be legally collectible out of the taxpayer. See Sections 1038, et seq, Compiled General Laws.

Yours very truly,

FRED H. DAVIS,
Attorney General.

TAX ASSESSOR—WHEN ENTITLED TO COMPENSATION

July 2, 1931.

Dear Sir:

Replying to yours of the 26th ultimo in which you state that the Tax Assessor of Broward County has presented to the Board of County Commissioners a bill for commissions for entering on his roll the properties that have been sold on tax certificates to the State of Florida, and that the bill rendered is for the year 1930, as to the payment of which you request an opinion from this office, permit me to say that Section 1028, Compiled General Laws, provides that the County Assessor of Taxes shall be entitled to receive commissions upon the amount of taxes, general or special, assessed.

Section 984, Compiled General Laws, provides that the tax assessors in making up their assessment rolls shall place thereon the lands certified

to them by the State Comptroller as having been sold to the State for taxes, and shall enter their valuations of the same on the rolls, and shall mark against such lands on their rolls the words "State Tax Certificate." The amount of taxes on said lands shall not be extended.

In the case of *Rawls vs. State ex rel Nolan*, 98 Fla. 103, 122 So. 222, the Supreme Court of Florida said:

"Public officers have no legal claim for official services rendered except when and to the extent that compensation is provided by law. And when no compensation is so provided, rendition of such service is deemed to be gratuitous."

In view of the provisions of Section 1028 cited above, which provides compensation to the assessor for taxes actually assessed only, it is my opinion that the Assessor is not entitled to compensation for making book entries for which the statute provides no compensation.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY OFFICIALS—WHEN PREMIUMS ON BONDS SHOULD
BE PAID FROM COUNTY TREASURY

July 16, 1931.

Dear Sir:

This refers to your favor of the 14th instant, in which you request my opinion as to whether or not premiums on bonds given by county officials can be paid out of the public funds, and in reply I beg to state that the statutes, to-wit: Section 2419 of the Compiled General Laws, 1927, specifically provides that premiums on bonds given by Boards of County Commissioners and members of the Boards of Public Instruction are to be paid for out of the County Treasury, and in all cases where bonds are required as a qualification of a person to fill a given office, it is my opinion, that unless the statute specifically directs that the premium on such bond should be paid out of the public moneys or the County Treasury, the payment of these premiums must be borne by the person qualifying for the office.

Very respectfully,

CARY D. LANDIS,
Attorney General.

BOARD COUNTY COMMISSIONERS—NOT AUTHORIZED TO
PROMISE TO PAY INTEREST ON COUNTY WARRANTS

July 16, 1931.

Dear Sir:

Replying to your favor of the 16th instant, in which you ask to be advised whether or not there is anything unlawful or irregular in the Board of County Commissioners issuing warrants to creditors drawing 8%

interest, acknowledging the debt and promising to pay out of the first funds available, permit me to say:

In the absence of a statute or a valid agreement for interest a county warrant does not bear interest. The Supreme Court held in the case of *State vs. Stewart*, 49 Fla. 259; 38 So. 600, that a valid agreement for payment of interest on county warrants could not be consummated in the absence of a statute authorizing payment of interest. We do not find a statute authorizing payment of interest on county warrants, nor do we find an opinion of the Supreme Court modifying the opinion of the case of *State vs. Stewart* (Supra). It naturally follows that we must hold that an agreement to pay interest on county warrants would be invalid.

Of course, you know that under Section 2304 of the Compiled General Laws of Florida, the Board of County Commissioners is authorized to transfer moneys from one county fund to another, with the consent of the State Comptroller.

Trusting you will find this to be satisfactory, and with best wishes, I am

Yours very truly,

CARY D. LANDIS,
Attorney General.

BOARD COUNTY COMMISSIONERS—AUTHORITY VESTED TO
CONVEY CERTAIN COUNTY PROPERTY

July 24, 1931.

Dear Sir:

Replying to your letter of the 17th instant, I beg to advise that in my opinion the Board of County Commissioners is authorized under the provisions of Section 2153 of the Compiled General Laws of Florida in their discretion to convey such property of the county, for which there is no public use or necessity.

Of course, they would have no authority to convey any property owned by the county, for which there was a public need or use, but as to such property as is not needed by the county for any public use, they have the discretion to dispose of and convey the same.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WHISKEY—ORDER FOR DESTROYING SHOULD BE ISSUED TO
SHERIFF BY JUDGE TRYING CASE

July 28, 1931.

Dear Sir:

Replying to your favor of the 22nd instant in which you ask to be advised as to whose duty it is to order the destruction of whiskey now held by the Clerk of the Circuit Court, and in which you state all cases involving the seizure of the liquor were disposed of months prior to the

organization of the Criminal Court of Record, and in which you ask whether it is the duty of the Circuit Judge or the Judge of the Criminal Court of Record to order the liquor destroyed, permit me to say:

Section 7626, Compiled General Laws, provides that it is the duty of the Judge of the Court trying the case to issue the order to the Sheriff commanding him to destroy the liquor. Therefore, it would be the duty of the Judge who tried the case in which this liquor is involved, to issue the order.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY COMMISSIONERS—MANDATORY DUTY TO CERTIFY
TO TAX ASSESSOR MILLAGE FOR COUNTY GENERAL
SCHOOL FUND

August 10, 1931.

Dear Sir:

Replying to your favor of the 5th instant, in which you ask to be advised whether or not it is a mandatory provision which requires the County Commissioners to certify to the Tax Assessor the millage certified to them by the Board of Public Instruction for the County General School Fund, permit me to say that Section 561 of the Compiled General Laws, 1927, sub-section 13, page 210, volume 1, is mandatory and leaves the discretion in the County Commissioners to change the amount certified by the Board of Public Instruction. Of course, the millage must not be less than three nor more than ten mills. See *Tommásello vs. Board of Public Instruction of Santa Rosa County*, 55 Fla. 341; 45 So. 886.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

STATE LANDS—CUTTING TIMBER SHOULD NOT BE
PERMITTED

August 17, 1931.

Dear Sir:

Permit me to thank you for your favor of the 15th instant, advising that you have notified certain parties who are cutting stave blocks off of lands which have been sold to the State for taxes not to pay the former owners.

It is my opinion that these people should be stopped and not be permitted to cut any more stave blocks from this land and this result should be accomplished by a suit in equity seeking an injunction restraining the parties from cutting the blocks in question. I think you should notify these

parties to cease taking any timber from the land, and then if they refuse, institute injunction proceedings. I doubt if it would be worthwhile to undertake to recover such money as may have been paid to the original land owners, but they should be stopped at this time, otherwise proceedings should be instituted.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SHERIFF'S FEES—IN RE TRANSPORTING PERSONS COMMITTED
TO INDUSTRIAL SCHOOLS, AND STATE PRISON

August 27, 1931.

Dear Sir:

Replying to your favor of the 22nd instant relative to Sheriff's mileage for transportation of boys and girls to industrial schools permit me to say that the advice to Sheriff Tippins under date of August 19th was based upon our memory of the provisions of Sections 4588, Compiled General Laws, which allows the Sheriff 12½c per mile, but inasmuch as the State has no funds available for the payment of transportation it is necessary for the Sheriffs, in transporting those committed to the industrial schools, to make their charges for transportation under Section 8649, Compiled General Laws, which allows only actual expenses and which expense must be paid by the county.

In some instances the sheriffs do transport prisoners to Raiford, as for instance, when the prisoner is delivered to Raiford by the sheriff to be executed, and in other cases of emergency.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FISHING—CONSTRUCTION OF LAW IN RE USE OF NETS IN
CERTAIN WATERS

September 1, 1931.

Dear Sir:

This refers to your favor of August 21.

I note from your statement that the Board of County Commissioners of Volusia County refuse to join in consent with the Board of County Commissioners of Seminole County for the use of nets in fishing in Lake Monroe and the St. Johns River and other waters lying between Volusia and Seminole counties. I note that you are of the opinion that it is only necessary to have a joint resolution from the counties to fix a closed season, but that the waters of any county may be open to fishing

by its citizens upon the request of the Board of County Commissioners or the State Game Commissioner upon such regulations as he may deem wise.

In construing this law it seems to me to be necessary to keep in mind the general scope, and purpose of the act. The purpose of this act, unquestionably, was to protect the edible or game fish of our State. It was not enacted in any sense for the aid or benefit or protection of commercial fish and the commercial fish industry. It seems to me clearly that the last paragraph of Section 24 of the act places in the first instance the authority for granting the use of nets in the State Game Commissioner. In other words, no nets may be used in the fresh waters of the counties without a permit or consent of the State Game Commissioner, however, this same paragraph of the act places a limitation upon the powers of the State Game Commissioner in that he alone cannot grant a permit for general fishing with nets, unless and until the Board of County Commissioners of the county in question gives its consent to such permit or authority to use nets.

Lake Monroe and the St. Johns River and other waters forming the boundary lines between Volusia and Seminole counties as they do, it is my opinion that from a practical standpoint it would be contrary to the spirit of the law, at least, for the State Game Commissioner to authorize the use of nets in those portions of these waters as might specifically lie within the boundary line of each county. In other words, it is my opinion that if the Board of County Commissioners of Volusia County refuse to consent to the use of nets, that it would be in violation of the spirit of the law for the State Game Commissioner to give his consent or authority for the use of nets in those portions of the waters that are in Seminole County, but form a part of the boundary line between the two counties, even though this was consented to by the County Commissioners of Seminole County. It is my opinion that the State Game Commissioner is the man who must decide in the first instance or case whether nets shall be used, and if used by and with the consent of the Board of County Commissioners, to himself determine the species of fresh water fish, except black bass, as may be necessary to be removed. The law specifically states that this rests in the judgment of the State Game Commissioner, and the purpose of permitting the use of nets may be two-fold, first, to remove rough fish or, second, in maintaining a proper balance of desirable fish.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

RACING—DUTIES OF SUPERVISOR OF REGISTRATION IN RE ELECTION

September 26, 1931.

Dear Sir:

Replying to your favor of the 24th instant relative to the duties of the supervisor of registration in connection with an election to be held under Senate Bill No. 361 to ratify or reject racing in the county permit me to say:

It is my opinion that it was the evident intention of the Legislature that special elections held under the provisions of the race track bill, should be

conducted as nearly as practicable in the same manner that general elections are conducted.

You ask to be advised whether or not the County Commissioners have authority to direct the Supervisor of Registration to prepare a certified copy of the qualified electors of each polling place in each election district for use of the election inspectors, without compensating the supervisor for said work in addition to his regular salary.

Permit me to say, if the law authorizes this to be done for the general election, it is my opinion that the same law would govern the special election, unless there is a special or local statute governing elections applicable to Palm Beach County.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES—SHERIFFS AND CONSTABLES

October 6, 1931.

Dear Sir:

Replying to your favor of the 25th ultimo, it is my opinion that inasmuch as the statute provides for a fee to be paid to the Sheriff for the execution of a warrant, also a fee for commitment of a prisoner to jail; and, inasmuch as the 1931 Legislature passed an act making the fees of the Constable the same as the Sheriff for like services, the execution of the warrant and the commitment of the prisoner to jail are two separate and distinct transactions; and that the commitment of a prisoner to jail is no part of the execution of a warrant.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SHERIFFS—WHEN MAY GO BEYOND LIMITS OF STATE TO RETURN PRISONER, AND ENTITLED TO MILEAGE

October 7, 1931.

Dear Sir:

Replying to your favor of the 2nd instant in which you ask to be advised whether or not a sheriff of this State upon receipt of a warrant issuing out of the County Court, or upon receipt of a *capias* issuing out of the Circuit Court, can go beyond the limits of the State to obtain the person named in the warrant, permit me to say:

It is my opinion that a Sheriff does have such authority. Former Attorney General Davis, on September 1st, 1928, rendered an opinion which is

published on pages 339 and 340 of the Attorney General's Report for the year 1927-28, in which he quoted former Attorneys General Ellis and Buford as having held that Sheriffs may lawfully return a prisoner from another State, and that when they do so in the execution of a warrant issued by a court of competent jurisdiction, that the Sheriff is entitled to his mileage.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PHYSICIANS—WHEN ENTITLED TO REMUNERATION FOR AT-
TENDING INQUESTS, AND MAKING POST-MORTEM
EXAMINATIONS

October 8, 1931.

Dear Sir:

Replying to your favor of the 3rd instant relative to the payment of physicians summoned by the Coroner for attending inquests and making post-mortem examinations, permit me to say:

Section 8529, Compiled General Laws, provides very definitely that no physician shall be summoned by the Coroner until the jury has come to the conclusion that it is absolutely necessary to have a physician to assist them in their further examination. And that no Coroner shall summon a physician until he shall be requested as aforesaid. If any physician shall otherwise attend such inquest he shall not be paid by the county therefor.

We appreciate the fact that it is frequently impracticable to operate under this statute because of the delay attendant upon the empanelling of a jury.

There should be a compliance with the statute, insofar as possible, but in cases where the services of a physician are absolutely necessary before the empanelling of the jury, and it is made to so appear, then in such cases, if county commissioners should pay the physician "for services rendered," it is my opinion that the State Auditor would not question the legality of the expenditure.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PROSECUTING ATTORNEY—WHEN ENTITLED TO CONVICTION
FEES—NOT ENTITLED TO FEE FOR CONDUCTING
PRELIMINARY HEARINGS

October 27, 1931.

Dear Sir:

Replying to your favor of the 16th instant in which you ask for my opinion on the question of whether or not a prosecuting attorney employed by the County Commissioners is entitled to a fee for conducting preliminary hearings before the county judge sitting as a committing magistrate, permit me to say:

Under Section 2156, Compiled General Laws, the attorney employed by the County Commissioners is entitled to not less than \$300.00 and not more than \$600.00 per annum, and in addition thereto said attorney is entitled to the same fees for conviction as are now or may hereafter be provided by law for attorneys in county courts as conviction fees in cases prosecuted before the County Court.

Said conviction fees shall be taxed as part of the costs of each case in which such conviction shall be had before the court of the county judge. Said compensation and fees shall be payable out of the fine and forfeiture fund of the county.

The statute does not appear to contemplate anything other than a conviction fee for the prosecuting attorney in addition to the salary above mentioned, and of course where the county judge is sitting merely as a committing magistrate, there is no conviction, and therefore, I am inclined to the view that the County Commissioners are not authorized to allow the prosecuting attorney a fee for conducting preliminary hearings before the county judge sitting as a committing magistrate.

Yours very truly,

CARY D. LANDIS,
Attorney General.

HUNTING LICENSE—SPECIAL ACT SHOULD BE RECOGNIZED

November 17, 1931.

Dear Sir:

Replying to your favor of the 14th instant, in which you ask to be advised whether in the issuance of resident hunting license, your county shall be governed by the statute of the 1931 Legislature providing for license tax of \$2.00 in counties of not less than 10,000 nor more than 11,000 population, or by the 1929 general act fixing the license at \$1.00, permit me to say:

It is my opinion that it would be advisable to recognize the special act and operate under its provisions, if your county comes within the population limit named therein, until the special act has been declared invalid by a court of competent jurisdiction.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SIGNS—WHEN DO NOT COME WITHIN PROVISION OF SECTION 3529, C. G. L.

December 16, 1931.

Dear Sir:

Replying to your favor of the 8th instant, permit me to say that inasmuch as Section 3529, Compiled General Laws, contains the proviso that said section shall not apply to stores or places of business where physicians' prescriptions are not compounded and where only patent and proprietary or com-

mon household remedies in the original package are sold, if the store proposing to use the sign: "Davis' Drug, Sundries, Sodas," comes within the exception contained in such proviso quoted above, it would be legal for the store to use or display the sign as reproduced above, and about which you make inquiry.

It is my opinion that the prohibition contained in Section 3529 against the use of any title, sign or display which might lead the public to believe that physicians' prescriptions were being compounded, was intended to apply to drug stores, where no registered pharmacist was in charge, and was not intended to apply to stores or places of business where physicians' prescriptions are not compounded and where patent and proprietary or common household remedies are sold only in the original package.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SUPERVISOR OF REGISTRATION—CONSTRUCTION OF
SECTION 258, C. G. L.

March 1, 1932.

Dear Sir:

I am in receipt of your letter of the 18th ultimo, requesting my opinion as to the last sentence of Section 258, Compiled General Laws of 1927, reading as follows:

"The Supervisor of Registration shall not be eligible for any other office until six months after ceasing to be such supervisor."

The primary system is a necessary and integral part of the whole election system of this State, and the obvious purpose of all the provisions of the election law, and such is the legislative intent, is that elections should be protected in accordance with the mandate of the Constitution to prescribe rules and regulations governing the conduct and holding of elections.

It is my opinion that the evident purpose of the quoted provision of this statute was and is to prohibit a Supervisor of Registration from acting as such in connection with an election—either primary or general—in which he is a candidate for any other office.

Yours very truly,

CARY D. LANDIS,
Attorney General.

NAVIGABLE WATERS—IN RE SHORE SPACE

March 1, 1932.

Dear Sir:

Your letter of the 22nd ultimo, addressed to Hon. Nathan Mayo, Commissioner of Agriculture, with reference to the ownership of shore spaces on navigable bodies of water, has been referred to this office.

In reply thereto, I beg to say that the bottoms of all navigable bodies of water in the State of Florida, before its admission into the Union as a

State, belonged to the Federal Government. But upon admission into statehood, Florida became proprietor of such bottoms, including the shore space between high and low water marks, and continues to hold such proprietorship except in a few instances where conveyances have been made by the State.

This is the universal rule with one or two exceptions in the case of Spanish grants before the State was admitted into the Union, in which grants it was specifically stated that the grants extended to low water marks.

You will find many cases, both Federal and State, which proclaim the above principle. I refer you to the early State case of *State vs. Gering*, 56 Fla. 603, 47 So. 353, in the first headnote of which is the following language:

"The navigable waters in the State and the lands under such waters including the shore or space between ordinary high and low water marks, are the property of the State."

See also 57 Fla. 399, 48 So. 643; 64 Fla. 480, 60 So. 223; 86 Fla. 393, 98 So. 505; 93 Fla. 535, 112 So. 274.

I note the statement in the last paragraph of your letter to the effect that you have been advised that all beaches in the State have been declared public highways, and under the jurisdiction of the State Highway Department.

In reply thereto, I beg to say that I do not know of any such State statute.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY BONDS—METHOD OF HANDLING

March 30, 1932.

Dear Sir:

This refers to your favor of the 28th instant, relative to county bonds and the appointment of trustees as provided for in Section 2322 of the Compiled General Laws of Florida, 1927. I assume that your county is controlled by this act and not by some special or local act. It is my opinion that the Board of County Commissioners should appoint the trustees in accordance with the requirements of Section 2322 of the Compiled General Laws.

This seems to be the mechanics of handling these funds provided by statute and in the face of the statute, and I am of the opinion that the money should be handled in this way, and not by the Board of County Commissioners themselves.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BOARD COUNTY COMMISSION—DUTY IN RE MONEY RECEIVED
FROM CERTAIN BOND ISSUE

April 1, 1932.

Dear Sir:

This refers to yours of March 30th, in which you state that Special Road and Bridge District No. 3 in Broward County voted a bond issue for the construction of certain roads and bridges therein and that some of the proposed roads were constructed while others were not, and that there remains of the moneys received from the sale of the bonds some \$40,000.00 in the hands of the commissioners of Broward County.

If the people voted a bond issue for the purpose of building certain designated roads, it is my opinion that this is a continuing duty and continues to rest upon the Board of County Commissioners until it is completed. If when the roads designated in the petition for the bond issue have been fully completed, there remains a surplus, then Section 2689 of the Compiled General Laws of 1927 would in my opinion be applicable to this surplus, and should be used for the repair and maintenance of the roads and bridges within said special tax district.

All of this is on the assumption that there is no special law or rather general law with special application that may apply to this particular district or to your county. You, of course, will know whether there is such a law.

Yours very truly,

CARY D. LANDIS,
Attorney General.REGISTRATION BOOKS—NAMES ERASED OR STRICKEN SHOULD
BE PUBLISHED

April 6, 1932.

Dear Sir:

This refers to your favor of the 4th instant.

It is my opinion that Section 297 of the Compiled General Laws, 1927, which provides:

*" * * * County Commissioners shall cause to be published in a newspaper, if there be one published in such county, and also post at the Court House door a list of the names, alphabetically arranged, that have been erased or stricken from the registration books of each district in such county"*

must be complied with. This, I think, was intended by the Legislature for the protection of the voters, and it is my opinion that the same should be specifically complied with.

Answering your second question in which you wish to know the last day poll taxes may be paid by voters, I would state that it is my opinion that the 21st day of May is the last day upon which poll taxes may be paid in order to qualify to vote in the Primary Election on June 7th.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

PROBATION OFFICER—SALARY, ABOLITION NOT AUTHORIZED

April 29, 1932.

Dear Sir:

This refers to your favor of April 20.

Section 3690, Compiled General Laws, provides that the Governor may, upon the request and recommendation of the Board of County Commissioners appoint at least one officer of either sex in each county, who shall be known as the probation officer of the county for which he or she is appointed; that the term of the probation officer shall be four years from date of appointment. The same section provides that in counties having a population of more than twenty thousand and less than thirty thousand the salary of the probation officer shall be nine hundred dollars per annum.

It appears that pursuant to the provisions of the statute the Board of County Commissioners of Broward County did request the Governor to appoint a Probation Officer for said county; that said Broward County has a population of more than twenty thousand and less than thirty thousand; that the board did recommend for appointment and that the Governor did appoint a probation officer for Broward County; and that the term of office is by statute fixed at four years.

The questions presented upon which you request my opinion are as follows:

1. Can the Board of County Commissioners of Broward County pay the Probation Officer nine hundred dollars per annum, the amount fixed by the statute, when the board appropriated in the county budget only four hundred fifty dollars for salary to be paid to the Probation Officer?

2. Can the Board of County Commissioners of Broward County abolish the office of Probation Officer in and for Broward County?

In regard to the first question presented, it is my opinion that the law imposes a duty upon the Board of County Commissioners to appropriate a sufficient amount to pay the salary of all county officers where the statute fixes the salary to be paid, and that where the board fails to do so that under the provisions of Section 2306, Compiled General Laws, the board should pay the salary of such officer from the sum reserved in the budget for "contingencies and emergencies."

In regard to your second question, it is my opinion that where a probation officer has been requested and recommended by the board and the

Governor has, pursuant to and in accord with the governing statute appointed and commissioned the Probation Officer for a term of four years, that in the absence of statutory authority the board has no power to abolish the office during the term for which such officer was appointed and commissioned.

It is my opinion that the Probation Officer of Broward County is legally entitled to the salary of nine hundred dollars per annum from the time that the population of Broward County was declared by the Census Bureau to have a population of more than twenty thousand.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

ELECTION—ELIGIBILITY

May 25, 1932.

Dear Sir:

Replying to your favor of the 20th instant, permit me to say for a person to be eligible as an elector in a county of the State of Florida, such person must have resided within the State for one year and in the county for six months prior to the day of the Primary Election. The statute requires a person to register and vote in the precinct of his permanent place of residence.

Where a person, registered in a particular county several years ago, moved to another county and participated in a municipal or county election, such person could not return to the first county and claim to be an elector of that county solely because his name had not been erased from the registration book.

The law requires the county commissioners and the supervisors of registration to erase from the registration book the names of all those who have removed from the county. The fact that the commissioners and the registration officer may have failed to erase the name of the person does not of itself make such person eligible to vote.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY BONDS—FUNDS MUST BE USED FOR PURPOSE DESIGNATED

June 6, 1931.

Dear Sir:

Replying to your favor of the 4th instant, I beg to advise that whenever counties or districts with bonding powers issue bonds for designated improvements, the funds arising from such bond issue are dedicated to those

particular improvements and they could not lawfully be used for any other purpose in any other district or for anything other than the designated purpose for which the bonds were issued.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

PRIMARY ELECTION—DUTIES OF SHERIFF

June 16, 1932.

Dear Sir:

Replying to your favor of the 13th instant, permit me to say, in view of the provisions of Section 8195, Compiled General Laws, making it the duty of the sheriffs of the State to exercise vigilance in the detection of any violations of the Primary Elections laws of this State, and in the apprehending of any violators thereof, it is my opinion that the county commissioners are not authorized to pay the Sheriff for providing a deputy at each polling place on Election Day.

Section 339, Compiled General Laws, expressly requires the Sheriff to provide a deputy at each polling place. Therefore, it is his duty to do so, just as it would be his duty to provide deputies in any emergency to prevent violations of law. I think that where the Sheriff actually pays each deputy to serve at polling places on Election Day, he would be authorized to charge the amounts paid against the expense of his office.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTORS—INSPECTORS AUTHORIZED TO ASSIST IN MARKING BALLOTS

June 27, 1932.

Dear Sir:

Replying to your favor of June 27, in which you ask to be advised whether or not the Clerk of the Board of Election Inspectors is authorized to assist electors in marking their ballots, permit me to say Section 332, Compiled General Laws, of 1927, provides that the voter may have the assistance of the "inspectors." You will observe that the plural and not the singular is used in the statute; therefore, at least two inspectors should act in assisting the voter, where it is necessary. One inspector cannot act in this capacity alone. In rendering assistance, the statute also provides that the inspectors shall also retire to a booth with the voter and assist him in the marking of the ballot. Section 333 requires that all voters be excluded from hearing the transaction between the inspectors and elector before the ballot is marked. In other words, the law requires the Board

of Inspectors to assist those requiring assistance and no individual inspector has a right to give assistance by himself. When the inspectors render assistance to the voter, they should inform him as to who the candidates on the ticket are and let the voter indicate the candidates of his choice to be marked.

The statute does not appear to authorize the Clerk of the board to render assistance to an elector.

An elector is not entitled to assistance in marking his ballot on the ground that he is unable to read and write. Assistance should be rendered by inspectors only where a person is unable to use his hands or is unable to see on account of blindness.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

COUNTY CONVICTS—COMMISSIONERS NOT AUTHORIZED TO EMPLOY

August 17, 1932.

Dear Sir:

You have made inquiry as to whether County Commissioners may employ county convicts on the public roads of the county and pay a reasonable amount for same from the Road and Bridge Fund to the Fine and Forfeiture Fund of the county.

Section 8549, Compiled General Laws of 1927, provides for employment on roads but does not authorize or contemplate any payment for such services in the county.

Section 8550 provides that the county convicts may be required to work on the public roads of the county but no compensation appears to be authorized in this section for such labor.

I have examined the statutes carefully and find no authority for payment for labor of county convicts for work on the public roads of the county in which they are serving time.

Your attention is called to Sections 7465, Compiled General Laws of 1927, which makes it a criminal offense for county commissioners to vote to pay any claim against the county not authorized by law. See also Section 7466, with reference to the Clerk of the Circuit Court signing any warrant to pay claims against the county and not authorized by law.

In view of the above, it is my opinion that your inquiry must be answered in the negative."

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAXES—APPLICATION OF LAW IN RE ACCEPTANCE OF BONDS,
COUPONS OR OTHER EVIDENCE OF INDEBTEDNESS
IN PAYMENT

November 18, 1932.

Dear Sir:

This refers to your favor of the 16th instant, in which you request my opinion as to Chapter 15056, Laws of Florida, 1931.

The Attorney General is an administrative officer, and as such is required to treat all laws as constitutional and valid unless and until a court of competent jurisdiction determine otherwise. This particular chapter provides that the Boards of County Commissioners, or Tax Collector, or Clerk of the Court are directed to accept and exchange all *bonds or interest coupons, or delinquent interest coupons or other delinquent obligations* of said county, district or municipality at par in the redemption of lands from tax sales, and in payment of all evidences of delinquent taxes due to the same, and in payment of all current taxes, except that part of all taxes assessed and collected in such county for and in behalf of the State of Florida, etc.

It looks to me as if this act does authorize the acceptance of "other delinquent obligations" of the county, district or municipality, etc., and it is my opinion, as an administrative official that this law should be complied with as it is worded, unless and until some court of competent jurisdiction determines that the law is invalid.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SPECIAL ROAD AND BRIDGE DISTRICT NO 3—IN RE DISPOSITION OF UNEXPENDED BALANCE

November 19, 1932.

Dear Sir:

I have your letter of the 12th instant submitting therewith a statement by a Public Accountant to the effect that there is on hand an unexpended balance of some \$40,000.00 in the account of proceeds from sale of bonds for construction of certain roads in said Special Road and Bridge District No. 3, created by Special Act of 1927, but that the unexpended balance is not sufficient to complete all the road projects provided for by the act for the reason that prior to March 1, 1929, there was expended on some of the road projects more money than was apparently contemplated by the said act to be so spent, and I note that you request my opinion in regard to the expenditure of this balance in the account.

It is my opinion that this balance may be equitably prorated to each of the projects which have an unexpended balance or by proper resolution of the board, such portion of the unexpended balance may be applied to

the construction of either one or more of the projects mentioned in the act which are deemed most beneficial to the district, provided that the total sum expended on any such project does not exceed the amount properly allocated to such project from the proceeds of sale of said bonds.

The above, I believe, is in line with paragraph six of the Accountant's statement, and I trust gives you the information desired.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY BOARD OF PUBLIC INSTRUCTION

NURSE, PUBLIC HEALTH—WHEN BOARD AUTHORIZED TO EMPLOY

January 20, 1931.

Dear Sir:

The Constitution and laws of the State contemplate and require that public school funds shall be expended solely for the support and maintenance of public free schools. At the same time, it has been generally recognized both by the court decisions and by departmental practice that the support and maintenance of public free schools includes the employment of those needful functionaries that are indispensable to a well-managed school system in addition to the teachers who render instruction in the school.

For example, the Supreme Court has recently upheld the right to use school funds to pay for the transportation of children to school. It has also upheld the right in another case from Duval County to use the school funds to pay for bookkeepers, business managers, and the like necessary to be employed in connection with the operation of a large scale school system.

On the same principle it would appear that where proper provision is made in the county school budget for same that the county school authorities have the right to make an appropriation of money to employ and maintain a public health nurse to supervise and look after the health and physical welfare of the school children of the county.

I am, therefore, of the opinion that there is nothing illegal in the expenditure of county school funds for a county school nurse. Where, however, the county nurse is not employed to look after school children only, but is employed to act as a general county nurse, the payment of the salary of such nurse out of school funds would be clearly contrary to law.

Yours very truly,

FRED H. DAVIS,
Attorney General.

SCHOOL TEACHERS—ENTITLED TO FULL PAY WHEN ABSENT
ON ACCOUNT SICKNESS OR DEATHSCHOOL BUILDING—NOTES CANNOT BE ISSUED FOR FUTURE
PAYMENT OF

March 9, 1931.

Dear Sir:

Replying to your letter of the 7th instant addressed to Hon. Fred H. Davis, Attorney General, I beg to advise as follows:

1. Section 1 of Chapter 13881, Acts of 1929, provides that any teacher employed in the public schools of the State who shall be absent from or unable to perform his or her duties as teacher, because of illness or death in the immediate household, shall be granted leave of absence by the Board of Public Instruction, and shall receive full pay for the time so absent, provided that such teacher shall not receive pay for more than five days, while absent from his or her duties on account of sickness or death during any one school year,

Section 3 of the act provides that the five days' sick leave in Sections 1 and 2 shall be cumulative from year to year to a limit of not less than twenty days, and that no teacher shall receive pay for time absent from his or her duties on account of sickness in excess of five days for any one school year and such cumulative period as he or she may be entitled to.

Reading Section 3 in connection with Section 1 of the act, it is my opinion that where a teacher did not have or claim a leave of absence during the preceding year and is absent for ten days during the present year, she may claim the five days allowed for the present year, and in addition thereto five days for the previous year. This could be carried back for previous years to include as many as twenty cumulative days in addition to the five days allowed for the current year.

2. Replying to your second question as to whether it would be permissible or legal for your board to issue notes payable in the future to raise funds to finish paying for a school building, it is my opinion that this cannot be done.

Section 566 of the Compiled General Laws of Florida is the only authority for the county school board to borrow money other than by the means of bond issues, and this section of the statute does not contemplate or authorize borrowing money except for the payment of outstanding school warrants, and it is therein made unlawful for any county school board to borrow any sum in any one year in excess of 80% of the amount as estimated by them to be required for the maintenance of the necessary schools in their county for the next ensuing scholastic year.

In *Leonard vs. Franklin* 84 Fla. 402, 93 So. 688, the Supreme Court held that long term interest bearing time warrants to be paid out of the general school tax levy in the county were in effect bonds, and that they were invalid.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SCHOOL BOARD—MEMBERS ENTITLED TO COMPENSATION
WHEN ABSENT ON ACCOUNT OF SICKNESS

March 31, 1931.

Dear Sir:

Replying to your favor of the 26th instant, I beg to advise that where a member of the school board has been elected and qualified, it is my opinion that he does not forfeit his office because he misses one or more board meetings on account of illness. Illness or being in a hospital would be a sufficient excuse for non-attendance of meetings.

As to whether or not he should be paid depends on what section of law would cover the compensation of the members of your county board. The general section of the statute is Section 526 of the Compiled General Laws of Florida, 1927, which is as follows:

"Compensation of members of county board. The members of the various county school boards shall be paid from the county school fund for their services, four dollars per day, for each day's services, and ten cents per mile for every mile actually traveled in going to and from the county court house by the nearest practical route."

It is my opinion that under this section of the statute, if a member did not attend a meeting he would not be entitled to his per diem or traveling expenses, because it is my idea that this statute intended that a member should be paid only when he actually attended the meeting and actually traveled to and from the place of meeting. However, if you will look at the Compiled Laws you will find that there are a number of laws, to-wit: Sections 527 to 550 inclusive, each of which undertakes in various ways to fix and determine salaries of boards of public instruction. And it is not possible for me to tell here just what counties each of these sections cover, but no doubt your board has worked this out and possibly some one of these laws covers your county by virtue of the census at the time of the enactment of the law.

If your county does come within some one of these laws and the law fixes an annual salary, then it is my opinion that a member of the board would be entitled to a monthly salary, even though he may have been sick and unable to attend to the duties of his office for a certain portion or even all of the month.

In other words, the member would be entitled to his salary so long as and until the office was vacated. And inasmuch as illness alone does not constitute a vacation of the office, I think the member of the board would still be entitled to his monthly salary or his proportion of the year's annual salary at the periodical times of making payment according to the custom of your board.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BONDS—SINKING FUND—MUST BE USED FOR SPECIFIC
PURPOSE

April 8, 1931.

Dear Sir:

Replying to your favor of the 6th instant as to the above matter, would state that I understand the facts as follows:

The Board of Public Instruction owes several bills in the sum of a few hundred dollars. One of these bills is for repairs on one of the school buildings and the others are some small obligations. The board owes some bonds of the City of Sarasota in a sinking fund, and your board desires to use some of these sinking fund bonds together with some of the general fund to pay these general obligations. Of course, there would be no reason why they cannot use the general fund, but where bonds of the City of Sarasota are held as a part of a sinking fund for a definite purpose, I do not believe your board would be authorized under the law to apply this sinking fund in any other way than in liquidation of the obligations, for which the sinking fund was created.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SUPERINTENDENT OF PUBLIC INSTRUCTION—SALARY

May 18, 1931.

Dear Sir:

Replying to your favor of the 16th instant, in which you make inquiry as to what is the proper salary to be paid to your County Superintendent of Public Instruction, would state that I have ascertained from the Comptroller's office that the receipts in Glades County for last year for school purposes, including Special Tax School District taxes, amount to \$38,832.65, and on this basis, under the General Law, to-wit: Section 551 of the Compiled General Laws of Florida, 1927, the Superintendent of Public Instruction would be entitled to a salary of \$100.00 per month.

You speak in your letter of a Special Law, under which you state that your County Superintendent is being paid a salary of \$250.00 per month, and that you think this is being paid under a Special Act of 1925. This Act is based on a population of not less than 2,440 and not more than 2,500, according to the Federal Census of 1920, and this Act, in my opinion, under the recent decision of the Supreme Court of the State of Florida is unconstitutional and void.

It is my opinion, therefore, that under the present law, the salary that can lawfully be paid to your Superintendent of Public Instruction is \$100.00 per month.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

NATIONAL FOREST FUNDS—DISTRIBUTION

May 18, 1931.

Dear Sir:

Replying to your favor of the 14th instant, in which you make inquiry with reference to the distribution of National Forest Funds, I beg to advise that Section 500, under the head of Conservation, Volume 16, page 122, United States Code Annotated, reads as follows:

"Payment of receipts to State for schools and roads. Twenty-five per centum of all moneys received during any fiscal year from each National Forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State in which such National Forest is situated, to be expended as the State Legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such National Forest is situated. When any National Forest is in more than one state or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. There shall not be paid to any State for any County an amount equal to more than 40 per centum of the total income of such county from all other sources. (May 23, 1908, c. 192, 35 Stat. 260; Mar. 1, 1911, c. 186, Secs. 13, 36 Stat. 963, June 30, 1914, c. 131, 38 Stat. 441.)"

Sections 1447 to 1450, inclusive, Compiled General Laws of Florida, 1927, provide for the distribution of National Forest Funds, mentioned in the above Federal Statutes, to be apportioned by the Comptroller of the State of Florida equally to the General School Fund and the General Road Fund in each county receiving a portion of this fund.

The above Sections of the Compiled General Laws mentioned appear on their face to have reference only to certain particular Forest Reserves,

but by reference to the title of Chapter 6966, Laws of Florida, Acts of 1915, it will be seen that these Sections, as originally enacted in this Act, are intended to apply to all Forest Reserves within the State of Florida.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SCHOOL BOARD—WHEN MEMBERS ENTITLED TO COMPEN-
SATION UNDER SEC. 530, C. G. L.

May 27, 1931.

Dear Sir:

We have your letter of the 23rd instant, in which you ask to be advised whether or not former members of the School Board of Hardee County are entitled to compensation under Section 530, Compiled General Laws, and if so from what date the salaries should be computed.

We note that you state that the former members received as compensation during the period of their incumbency per diem and mileage and made no claim to salary under Section 530 until recently.

Replying to your first question, permit me to say we think that if your county came within the terms of Section 530, Compiled General Laws, as to population and assessed valuation while the former members constituted the Board that they might have a valid claim against the present Board for the difference between what they received and the amount of compensation provided by the statute, which claim might be enforced by mandamus.

If the claims are allowed, the date from which the salaries should be computed would be the date beginning with the time that Section 530 became applicable to your county.

Should you desire further advice upon this subject, permit me to suggest that you confer with your attorney for the School Board, and, if the Board does not have an attorney, then with the attorney for the County Commissioners.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICTS—NOT AUTHORIZED TO
ISSUE BONDS TO PAY CERTIFICATES OF INDEBTEDNESS

June 5, 1931.

Dear Sir:

Replying to your request for an opinion as to whether a special tax school district may issue bonds for the purpose of refunding or paying the outstanding certificates of indebtedness, I beg to advise that in my opinion this cannot legally be done.

In the case of *Barrow vs. Moffet, et al.*, 95 Fla. 11, 116 So. 71, the Supreme Court reversed the decree of the Circuit Court for Highlands County validating bonds authorized by special act of the Legislature to refund past indebtedness, in which the Court said the Constitution contemplates the payment when due, of expenses for maintenance and support of schools, and does not contemplate the issue of bonds to pay the past indebtedness.

In *Johnson et al. vs. Board of Public Instruction et al.* 81 Fla. 503, 88 So. 308, the Supreme Court reversed the decree of the Circuit Court of Broward County, validating certain bonds issued by a special tax school district of that county, for the purpose of employing teachers for the schools of the district, and to defray the general expenses of running and operating said schools.

In its opinion the Court said that neither the Constitution nor the statute contemplates the issuing of bonds payable in future years for the purpose of employing teachers for the district schools, and to defray the general expenses of running and operating such schools.

In discussing Section 17 of Article XII of the Constitution, which authorizes the issue of bonds by special tax school districts for the exclusive use of the public free schools within such district, the Court observed that the purpose of said provision was to supplement the funds provided by Section 10 of Article XII, so as to more amply provide the means for which bonds are usually issued, namely, the acquisition and improvement of school houses, etc., the life or duration of which would have some relation to or coincidence with the period during which the bonds are to run, the purpose being to allow those who use such permanent facilities to pay for them as they are used by issuing bonds extending over a series of years, during which the taxes for interest and sinking fund may be collected.

In view of these decisions of our Court, it is manifest that bonds may not be issued and sold as a means of raising money with which to defray the operating expenses of the schools, either present or past.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RUBBER STAMPS—LAW DOES NOT PROHIBIT USE IN
CERTAIN CASES

June 8, 1931.

Dear Sir:

Replying to your favor of the 5th instant, in which you request my opinion as to whether or not it is legal for the Superintendent to use a stamp for signature on warrants that say "countersigned by," and if it is legal for the Chairman to use stamp for his signature, I beg to advise that I find no law specifically prohibiting the use of a rubber stamp, but

it is my opinion that a signature when required by law does not mean rubber stamp.

The purpose of the signature is to satisfy the paying officer, and if he is satisfied to pay on the authority of a rubber stamp and take his chances, I assume there would be no objection legally. I am of the decided opinion, however, that it is a very dangerous policy to use a rubber stamp by any officer on any instrument of serious importance, and especially for the payment of money, and my advice is not to use the rubber stamp in any of these cases.

You speak also of the use of the stamp "as done on school bonds and their coupons." I certainly think you are mistaken as to the signature on school bonds as to the use of rubber stamp. As to the coupons, they are validated by the use of a lithographed signature, but they are attached to the original bond which is authenticated by an original personal signature of the proper officer.

Very respectfully,

CARY D. LANDIS,
Attorney General.

SCHOOL DEBTS—NO REMEDY AT LAW

June 18, 1931.

Dear Sir:

Replying to your favor of the 8th instant, in which you ask to be advised as to what your board may do toward refunding debts incurred during the past school year permit me to say:

We know of no law which will permit your board to issue "time warrants or tax anticipation notes or bonds," nor do we know of a statute which will permit your board to borrow any sum of money, except as provided in Section 566 of the Compiled General Laws, 1927, which limits the amount to 80% of the amount estimated to be required for the maintenance of the necessary common schools of the county for the next ensuing scholastic year, in the manner prescribed by Section 561, subsection 13, Compiled General Laws.

Section 569, Compiled General Laws, which is Chapter 8548, Acts of 1921, authorized the Board of Public Instruction in each county in the State of Florida having an outstanding indebtedness at the time the Act became a law to issue and sell interest bearing coupon warrants in a sum or sums not to exceed the total amount of the indebtedness then outstanding.

The express language of the statute above referred to clearly referred to the then existing indebtedness of the school board, and not to future debts. The language employed is susceptible of no other construction, and you will

understand this to be true when you read the quotation below, which is from the statute itself:

"THE BOARD OF PUBLIC INSTRUCTION OF EACH COUNTY IN THE STATE *NOW HAVING AN OUTSTANDING INDEBTEDNESS, ETC.*"

The time referred to can be construed to mean no time except the date of 1921 upon which the Act took effect. There is no statute at this time which will permit a school board to borrow more than the amount provided for in Section 566, Compiled General Laws of 1927.

We regret that the law is such that we can be of no assistance to you in solving the financial problems facing your board.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SCHOOL FUNDS—BOARD HAS POWER TO USE FOR MAINTAINING AND OPERATING SUMMER SCHOOLS FOR TEACHERS

BUDGET ANNUAL—LEGAL TO FIX AMOUNT TO COVER TRAVELING EXPENSES OF MEMBERS BOARD

July 3, 1931.

Dear Sir:

Replying to your telegram of July 2nd with reference to the legality of using county school funds to maintain and operate a summer school for teachers, I beg to advise as follows:

Paragraph 11, Section 561, Compiled General Laws, which prescribes the duties of the Board of Public Instruction, permits the Board to perform all acts reasonable and necessary for the promotion of the educational interests of the county and the general diffusion of knowledge among the citizens.

We are informed by the State Superintendent of Public Instruction that summer schools for teacher training have been conducted in several counties for many years. The Section above cited appears to give Board of Public Instruction broad powers, and there being no specific statutory provisions prohibiting county boards from maintaining summer schools for teacher training, it is my opinion that the Board in the exercise of its discretion does have power to maintain such schools.

We decline to pass upon the wisdom of this practice under existing conditions.

Replying to your second question as to the legality of appropriating by the Pinellas County Board of Public Instruction of a fixed amount of money yearly to be used as transportation expenses for County Superintend-

ent or Members of County Board of Public Instruction, permit me to say that it is my opinion that it is legal for them to fix in the annual budget a sum from which the traveling expenses of the County Superintendent may be paid and from which the mileage of the members of the Board for attending Board meetings may be paid.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PUPILS, CERTAIN CONTRACT FOR TRANSPORTATION VOID

July 6, 1931.

Dear Sir:

Replying to yours of the 29th ultimo, in which you advise that the former school board closed contracts for transportation of pupils for three and four years beyond their term of office and in which you state that the present board feel that the contracts should be annulled because the contract price is too high, permit me to say there is no statute authorizing a school board to enter into contract for the transportation of pupils.

In the case of *Nassau County vs. Downie*, 16 Fla. 171, the Supreme Court of Florida said:

"No officer can bind the County for expenses or upon contracts unless the expenditure is expressly or by implication authorized by law."

The law provides that among the duties of the school board is that of performing all acts reasonable and necessary for the promotion of the educational interests of the County, and under this provision of the statute a school board would be authorized to enter into an agreement with a person or persons from year to year for the transportation of pupils or to provide in the budget each year an amount to defray the expense of the transportation of pupils.

It would be unreasonable to say that a school board could bind itself and successors in office over a long period of time by a contract for the transportation of pupils, and, inasmuch as the statute only authorizes the board to perform reasonable and necessary acts for the promotion of the educational interests of the County, it is my opinion that the contracts entered into by the former Board of Public Instruction of Brevard County are void, and that the present Board of Public Instruction may rescind said contracts at will or at their pleasure and make other arrangements with other parties from time to time for the transportation of pupils.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TEACHERS' SALARIES—BOARD NOT AUTHORIZED TO PAY
INTEREST WHEN PAST DUE

July 13, 1931.

Dear Sir:

Replying to your favor of the 11th instant in which you ask to be advised whether or not your school board can legally pay interest on past due teachers' salaries, permit me to say:

In the case of Duval County vs. Charleston Engineering and Construction Company, 134 So. 509, the Supreme Court of Florida said:

"It is a general rule that in the absence of statute or express contract, the county is not liable for interest on its obligations."

Teachers are employed by the school board on contract. In the absence of a specific provision in the contract, and where there is no statute authorizing the payment of interest, it is my opinion that the school board could not legally pay interest on teachers' salaries which are past due.

The opinion above referred to was rendered April 28th, 1931. We know of no subsequent opinion of the Supreme Court which alters the rule above quoted.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CONSTITUTIONAL AMENDMENT—DOES NOT AFFECT BOARD'S
AUTHORITY TO BORROW MONEY

August 4, 1931.

Dear Sir:

Replying to your favor of the 31st instant, in which you ask to be advised the effect, if any, the amendment to Section 6 of Article IX of the Constitution of the State of Florida has upon the authority of the County School Boards to borrow up to 80% of anticipated revenue, permit me to say:

The amendment to the Constitution has no effect whatever upon the Board's authority to borrow up to 80% of its anticipated revenue, because the constitutional amendment referred to applies to bonds, interest and sinking funds, and not to current expenditures.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT—ELECTION FOR CONSOLIDATION, CONSTRUCTION OF LAW

August 5, 1931.

Dear Sir:

In response to your request for an opinion as to the legal requirement of notice for holding an election to determine whether two or more contiguous special tax school districts may be consolidated, and as to the qualification of electors petitioning the Board for such election, I beg to advise as follows:

Chapter 7913, Laws of Florida, Acts of 1919, makes it the duty of the County Board of Public Instruction to call an election to determine whether two or more special tax school districts shall be consolidated, whenever one-fourth of the qualified electors of each of such districts, who pay a tax on real or personal property and who are resident in such special tax school districts, shall petition said Board for such election. Such petition shall contain one-fourth of the qualified electors residing in each of the districts proposed to be consolidated, who pay a tax on real or personal property.

The notice of such election must be published once a week for four consecutive weeks prior to the holding of such election in a newspaper published within the County and having a general circulation throughout the County.

If a majority of the votes cast by the qualified electors in each of the districts proposing to consolidate, be for consolidation, the districts so voting in favor of consolidation shall become one entire district from and after the expiration of thirty days after the entry of the Board of Public Instruction of the County in the minutes of said Board of the result of such election.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SALARY—ONLY AMOUNT FIXED BY LAW CAN BE PAID

September 17, 1931.

Dear Sir:

Replying to your favor of the 14th instant in which you ask to be advised whether or not when the personnel of the old board and the personnel of the new board of public instruction of your county meet in January, the personnel of both boards should be paid for the meeting, permit me to say:

It appears that the members of the school board of your county are paid under the provisions of Section 531, Compiled General Laws, which

fixes the salary of school board members at \$300.00 per annum payable in monthly installments.

Therefore, it is my opinion that \$300.00 per annum and no more can be paid to each member of the school board of your county.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SCHOOL HOUSE—COUNTY SCHOOL FUNDS MAY BE USED
FOR REBUILDING

October 16, 1931.

Dear Sir:

With reference to the questions asked in your letter of the 8th instant, as to whether the County School Board may use the General Fund of the County to re-build a school house destroyed by fire in a special tax school district or whether such building should be replaced from funds of the special tax school district, I know of no reason why the school board should not use any available general funds for this purpose. Special tax school district taxes are levied and collected for the purpose of supplementing the general fund for the maintenance of the public schools within the district, and there is no requirements that buildings in such district should be provided for exclusively from the special tax school district funds.

Section 561 of the Compiled General Laws of Florida, in the enumeration of the duties of the Board of Public Instruction, makes it their duty to provide sites for school houses and do whatever is necessary with regard to constructing, furnishing and keeping in repair school houses. I am of the opinion, therefore, that the county board of public instruction may use county school funds for the purpose of building school houses anywhere in the county, including those in special tax school districts to the extent that funds are available for that purpose.

Yours very truly,

CARY D. LANDIS,
Attorney General.

HOLIDAY—ATTENDANCE RECORD SHOULD NOT SHOW
PUPILS PRESENT ARMISTICE DAY

October 21, 1931.

Dear Madam:

This refers to your favor of the 20th instant, and in reply would state that Armistice Day is a legal holiday in the State of Florida, see Section 6934, Compiled General Laws of Florida, 1927.

Section 505 of the Compiled General Laws of Florida would not authorize the Board of Public Instruction to have the attendance of all pupils marked present for Armistice, in order that the teachers might receive full pay for said day. Section 505, above referred to, refers only to the period from December 24th to January 1st, both inclusive.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT ELECTIONS, QUALIFIED
VOTERS DEFINED

June 30, 1932.

Gentlemen:

Section 707, Compiled General Laws, expressly defines who are qualified voters for special tax school district elections. Since the qualifications are defined by law, they should be strictly adhered to. The Section above mentioned provides that all qualified voters residing within a special tax school district, who pay a tax on real or personal property, shall be entitled to vote. This means an ad valorem tax, that is, a tax imposed upon real or personal property based upon the valuation of the property as distinguished from other forms of taxation, such as license and privilege taxes.

(The payment of automobile license tag tax does not entitle a person to vote in special tax school district elections, and opinions to the contrary heretofore rendered should be disregarded.)

To be a qualified voter in a special tax school district election, a person must:

First, be a qualified voter in some precinct in the district. To be a qualified voter, a person must have paid poll taxes for two years preceding the year in which the election is held, unless exempt from payment of poll taxes.

Second, reside either in the special tax school district which is already created, or within the territory which is proposed to be made into a special tax school district.

Third, pay a tax upon either real or personal property in the district. The statute uses the word "pay," which means that only those voters who pay taxes assessed against them are entitled to vote. This does not mean that a person must pay up all taxes assessed against him which are not yet legally due before he is entitled to vote. It simply means that he must have in the past been assessed for some real or personal property subject to taxation in the district, and that he paid a tax upon same, and that he is at present time the owner of real or personal property within the district, and that he is at the present time assessed for taxes thereon. The purpose of the law was to confine the voting to the permanent residents of the dis-

trict, who have resided in the district long enough to have prior to the election paid some tax in the district, and who are owners of real or personal property against which taxes are assessed. I think the Legislature used the word "pay" as distinguished from some other word, with the intention of carry out this idea.

Before a special tax school district election, the supervisor of registration should get up a list of all qualified voters who reside in the special tax school district. This list should then be turned over to the Tax Assessor or Tax Collector in order that he may check off on the list the names of all voters appearing on such list who appear to have paid a tax in the district.

Section 706, Compiled General Laws, contains the following provision concerning the foregoing:

"It is hereby made the duty of the supervisor of registration of any county to furnish upon payment for such service, to the county board of public instruction on demand, a certified list of the qualified voters residing in a special tax school district, or the territory to be created into a special tax school district, that have paid a tax on real or personal property for the year preceding any such special tax election."

Only those whose names are properly put on the foregoing list are qualified to vote.

Respectfully submitted,

CARY D. LANDIS,
Attorney General.

SCHOOLS—IN RE ATTENDANCE OF STUDENTS FROM OUTSIDE OF DISTRICTS

August 19, 1932.

Dear Sir:

I have your letter of August 12th with reference to attendance in high schools by students not within the special tax district in which the high school is located.

In reply I beg to call to your attention Section 718, Compiled General Laws of 1927, controlling in such cases and reading as follows:

"Non-Resident Children May Attend.—Children residing outside of any special tax school district shall not attend school in any such district without the consent of the trustees thereof, and of the county board of public instruction: Provided, that nothing in this law shall be so construed as to prevent attendance from an adjoining county provided the county school board of such adjoining county shall pay a pro rata share of such attendance. Such pro

rata share to be estimated by the trustees of such school where such attendance is made: Provided, further, that pupils from other districts or sub-districts shall be subject to same conditions as pupils from other counties as herein provided for."

Very truly yours,

CARY D. LANDIS,
Attorney General

SCHOOLS—IN RE DUTIES TRUSTEES AND SCHOOL BOARD

September 14, 1932.

Dear Sir:

Replying to your favor of September 8, permit me to say Section 718, Compiled General Laws, provides that children residing outside of the special tax school district shall not attend school in any such district without the consent of the trustees thereof and without the consent of the county board of public instruction. In view of this statute it seems to me that the consent of the trustees and school board might be made contingent upon the payment of tuition fee.

Replying to your second question, permit me to say it is my opinion that where a high school is located in a special tax school district and is supported partly by funds from the general school fund and the special tax fund, and there is no other high school in the county, that the trustees and the school board should make it possible for all children of high school age and attainment to attend without the payment of tuition; however, I think where there is a high school in the county supported entirely by the general school fund and children desire to attend a high school within the county partly supported by special tax school district funds, that it might be proper for the trustees and the school board to make their consent contingent upon the payment of a tuition fee.

Replying to your third question, permit me to say Section 10 of Article XII of the Constitution of the State of Florida, provides that a special tax school district may levy a special tax *for the exclusive use of public free schools within the district*; therefore, it is my opinion that special tax school district funds could not be used to pay the expense of transportation for high school pupils.

Very truly yours,

CARY D. LANDIS,
Attorney General.

COUNTY COMMISSIONERS

COUNTY PROSECUTING ATTORNEY—BOARD NOT AUTHORIZED
TO DISPENSE WITH SERVICES

January 19, 1931.

Dear Sir:

This is in answer to your letter of January 19th on the above subject.

In 1925 the Legislature so amended the law relating to the appointment of a county prosecuting attorney as to make it mandatory that such an attorney be appointed. This law reads as follows:

"The board of county commissioners of the several and respective counties of the State of Florida wherein there shall be no county court or criminal court of record or court of record for the trial of criminal causes, are hereby empowered *and required* to employ an attorney at law to prosecute all persons, firms and corporations, charged with the commission of any kind of offense against the laws of the State in or before the county judge's court." See Section 1 of Chapter 10206, Acts of 1925.

You will notice that the language of the above law "requires" the county commissioners to employ a county prosecuting attorney. I am therefore of the opinion that the county commissioners have no authority to do other than carry out the statute.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX COLLECTOR—DISPOSITION OF INTEREST CREDITED TO
BALANCES ON FUNDS IN HANDS

February 5, 1931.

Dear Sir:

The general rule is that interest which accumulates on a fund in the hands of trustees follows the trust fund and becomes a part of it. It appears to me that the same thing would apply to interest which accumulates on moneys collected by the tax collector and held by him prior to its being paid over to the State and county authorities.

I remember a Court decision to this effect against the former Governor of Illinois, who while State Treasurer placed certain State funds at interest for which he made no accounting. The Court in proceedings in that State held that the interest should have been added to the principal and all accounted for in like manner as the principal.

It occurs to me that the same rule would apply to the funds which have been collected there by the tax collector on daily balances held by him between the time of collection and his remittance to the regular depository. If the county commissioners wish to authorize the use of this money for planting palms along the highways, I am sure the State would make no objection to that disposition of it, even though as I have said above the general rule would be that the interest should be added to the principal and all paid to the proper depository in proportion to the whole fund.

It so happens that interest of this kind is unusual and extraordinary, and since it appears to have been collected through the special efforts of the tax collector without his having been required by law to do so, it should probably be expended for the benefit of the county in some useful way.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SHERIFFS—OFFICIAL BONDS REQUIRED TO COVER FULL
TERM OF OFFICE

February 9, 1931.

Dear Sir:

When a sheriff is appointed to office he must give a bond which will be good for the entire term of office for which he is appointed.

In the case of Sheriff McLaughlin referred to in your letter, his commission is to act as sheriff until the end of the next ensuing session of the State Senate pending the suspension of the regularly elected sheriff. Any bond which was given by him must run for the entire term for which he qualified, which would expire in June, 1931. If a bond has been given for a less term it was improperly accepted in the first instance. There is no such thing as accepting a bond for a county officer and renewing it each year. It may be that if a surety company bond is given that the sheriff will have to pay the premium each year, but the bond company remains liable whether it is renewed or not, if it is properly made out in the first instance.

Yours very truly,

FRED H. DAVIS,
Attorney General.

SHERIFFS—AUTHORIZED TO HIRE GUARDS FOR JAILS

February 10, 1931.

Dear Sir:

Answering your letter of February 4th making inquiry on the above subject, I beg to advise that in my opinion the sheriff is entitled to the guard hire claimed by him as mentioned in your letter.

It is not only within the power of the sheriff but it is his duty to hire a guard for the county jail. If he fails to do so and prisoners are burned up or injured because of such failure to have a guard at the jail or within easy access to it, the sheriff will be liable.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS,
Attorney General.

TRAFFIC OFFICERS—CONSTRUCTION OF STATUTE

February 13, 1931.

Dear Sir:

This will answer your letter of February 9th regarding the above subject.

Chapter 12002, Acts of 1927, was promoted in the Legislature by the Florida State Automobile Association, and the purpose of passing it was to abolish the fee system with reference to arrests for traffic violations.

Under this law it was provided that traffic officers should be appointed or dismissed upon the recommendation of the board of county commissioners, and that they should receive a fixed salary which they would have paid to them by the counties, irrespective of how many arrests they might make. The salary of a traffic officer is required to be paid out of the county fine and forfeiture fund, and it is expressly made unlawful for any officer to charge, collect or receive any compensation other than his monthly salary.

Whatever fees for arrests and the like which may accrue in connection with the prosecution of any person charged with violating traffic laws under Chapter 12002, should be paid into the county fine and forfeiture fund to reimburse the county for the amount of salary paid to the traffic officer.

It is unlawful for the sheriff or any of his deputies to draw fees for enforcing the traffic law under Chapter 12002, Acts of 1927. In fact, the law was passed to prevent that very thing. It was intended to allow the sheriff to appoint one or more deputies to act as traffic officers and be paid a regular salary for the service, provided the county commissioners approved the same. It was intended that all fees which might be charged in connection with prosecutions should be put back into the fine and forfeiture fund to make up for the salary which the county commissioners under the terms of the law were forced to pay.

Yours very truly,

FRED H. DAVIS,
Attorney General.

CONTRACT—MEMBERS OF BOARD NOT AUTHORIZED TO
ENTER INTO FOR BENEFIT OF HIMSELF

June 25, 1931.

Gentlemen:

This refers to your favor of the 23rd instant. I note that you request my opinion as to whether or not your Board of County Commissioners would have the right to enter into a contract with one of their number to take shell from a pit belonging to some member of the Board, such member of the Board being willing to charge the county nothing for the shell other than that one-third of the shell would be taken out and placed for the personal use of the member of the Board owning the shell pit.

It is my opinion that this would be a violation of Section 7470 of the Compiled General Laws of Florida, 1927. It is true that it is a close case and it might be argued that these particular facts would not bring the Commissioners within the province of this particular statute, yet I fear that it does come within the statute, and it is my advice that the County Commissioners of every county of the State at all times keep themselves free and above every suspicion of dealing with themselves. It was the purpose of the law to prohibit the County Commissioners from dealing with themselves, and every transaction that savors of such a dealing should, in my opinion, be avoided.

Very respectfully,

CARY D. LANDIS,
Attorney General.BOND ISSUE—BOARD COUNTY COMMISSIONERS NOT AUTHOR-
IZED DIVERT PROCEEDS FOR OTHER PURPOSE

July 22, 1931.

Dear Sir:

Replying to your favor of the 15th instant, in which you state that there is a balance to the credit of road and bridge district No. 3 in Broward County, and that your Board of County Commissioners wished to use this balance to re-build a destroyed section of the beach road, a mile or two in length, which road is not any part of the system of roads laid out, incorporated and designated as a road upon which the bond money above referred to was to be expended and in which you ask whether or not the Board could legally use fund referred to for the re-building of the destroyed part of the beach road, provided the State Highway Department has agreed and obligated itself to refund all moneys expended from such fund within the designated time, permit me to say:

We know of no law which would authorize the Board of County Commissioners to divert the proceeds of a bond issue in a particular district to any other purpose than that for which the bonds were issued.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SALARY—IN RE CONSTRUCTION OF SEC. 2223 C. G. L.

August 6, 1931.

This refers to your favor of August 3rd, in which you request my opinion as to the constitutionality of Section 223 of the Compiled General Laws of Florida, 1927, relative to salary authorized to be paid to County Commissioners.

The Section of the law referred to provides that the salary of the County Commissioners in all counties having a population of not less than 50,000 and not more than 55,000, according to the last Federal or State census and with not less than five special road and bridge districts, shall receive \$2,400.00 per annum. Article III of Section 20 of the Constitution of the State provides among other things as follows:

"The Legislature shall not pass special or local laws in any of the following enumerated cases, that is to say * * * regulating fees of officers of the State and counties * * *"

It is, therefore, clear that in order to fix or change the fees of County Commissioners, who are county officers, it is necessary that this be done by a general law, yet the population limitation is such that it is clear that this was meant to apply to only one, or possibly two counties. There is no question but what a general population basis for a general law fixing the fees of County Commissioners throughout the State would be a proper and valid basic classification, but when it is used to provide particular fees for any certain county then its application is purely local and it is in contravention of the Constitution as shown by the Article and Section above referred to.

The Supreme Court has held this in several cases and has just handed down a decision within the last week in the case of John G. Anderson, Jr., Appellant, vs. The Board of Public Instruction for the County of Hillsborough wherein the population basis was:

"All of the counties of the State having a population of not less than 145,000 and not more than 155,000."

they held this to be a special law and in contravention of the Constitution and used the following language:

"But even though a Bill is introduced and treated by the Legislature as a general law, if the Bill in truth and in fact is clearly operative as a local or special Act and the Court can so determine from its obvious purpose or legal effect as gathered from its language or its context, this court will so regard it and deal with it as a local or special law in passing on its validity, regardless of the guise in which it may have been framed and regardless of whether the particular county or locality intended to be affected by its is in terms named or identified in the Act or not."

The Court cited *Jordan vs. State, ex rel, Davis*, 129 So. 747; *Stripling vs. Thomas*, 133 So. 824, and *Whitney vs. Hillsborough County*, 127 So. 486. Thus it is my opinion that Section 2223 of the Compiled General Laws of Florida is in contravention of Article III of Section 20 of our Constitution and will accordingly, no doubt, be declared null and void as violative of the Constitution if and when such Act is once before the Courts of this State.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT—IN RE COMPROMISE AD-
JUSTMENT OF CERTAIN ACCOUNTS BY BOARD COUNTY
COMMISSIONERS

August 5, 1931.

Dear Sir:

This refers to your request for an opinion with reference to a compromise adjustment and settlement of accounts of the Board of County Commissioners and the Road Districts of your county. As I understand the situation, the facts are as follows:

You have a number of road districts in your county, some of which are bonded and some are not. That for some years the County Commissioners have paid the Tax Collector's commissions for the collection of the taxes levied for the different road districts out of the General Revenue Fund and not out of the collection of the taxes of the different districts. Further, I understand that the State Auditor has made and filed an audit of these various accounts and the question now has arisen as to how they should be adjusted.

Under the law the Tax Collector's commissions in the first instance should have been paid out of the collections from the districts instead of and in place of out of the General Revenue Fund of the county. I understand that Road District No. 1, which covers approximately 70% of the territory and taxable property of the county is objecting to repayment of these commissions on the theory that it was a voluntary payment of tax money made with the full knowledge of all the circumstances and

that in any event this could not be done over a greater period than for three years back on the theory that the statute of limitations upon a liability created by the statute would apply.

I further understand that an offer of compromise adjustment has been made by this district to agree to a settlement by the Board of County Commissioners for the re-payment of an amount equal to the Tax Collector's commissions for three years past, this to be a complete and full settlement and adjustment of the entire claim. It is my opinion that any compromise adjustment made with District No. 1 should, of course, apply equally to all other road districts where the facts are the same. It is my opinion that the above and foregoing suggested compromise adjustment would be a wise settlement of this situation. To start with, the funds are all tax money and such a settlement would avoid what might be prolonged litigation, and as I understand the facts, no one would be injured to any appreciable extent by this settlement. This being a more or less complicated situation, with threatened litigation as to the adjustment, it is my opinion, that the Board of County Commissioners would be acting within their authority to make this adjustment, and, as I understand the facts, it is my opinion that it would be to the best interest of the county for such adjustment to be had.

Very respectfully,

CARY D. LANDIS,
Attorney General.

PROBATION OFFICER—PAYMENT OF ACTUAL EXPENSES
LEFT TO DISCRETION OF BOARD

August 14, 1931.

Gentlemen:

In response to your request conveyed by Mrs. G. S. Nesmith, Probation Officer of your county, for an opinion on your authority to pay her expenses as such probation officer, I beg to advise that, in my opinion, you have the discretion as a Board of County Commissioners to reimburse the probation officer, duly appointed and qualified to the extent of actual expenses necessarily incurred in the discharge of her official duties as such probation officer.

The statute authorizing the Governor, upon the request and recommendation of the Board of County Commissioners to appoint such probation officer, fixes one hundred dollars (\$100.00) as the annual salary in counties having less than ten thousand (10,000) inhabitants. See: Section 1 of Chapter 6494, Acts of 1913, now Section 390, Compiled General Laws, 1927. Section 3 of the Act, which is now Section 3694, Compiled General Laws of 1927, provides that probation officers, provided for by said Act, shall receive no compensation or fees other than the compensation therein provided. The words "compensation" and "fees" used in Section 3 of the Act may be construed as synonymous with "salary" used in Section 1 of

the Act. As so used the words "compensation" and "fees" should be construed to mean reward for services rendered, and, in my judgment, could not be construed to mean reimbursement for actual expenses incurred in the discharge of official duties of such probation officer.

There is nothing in the Act specifically providing for or requiring the County Commissioners to pay actual expenses; on the other hand, there is no prohibition against the same, in this or any other act.

A reasonable construction to be placed upon the Act is that the Legislature meant to leave it to the judgment and discretion of the County Commissioners to pay such expenses, if in their judgment the same is warranted by the character of service rendered.

Respectfully,

CARY D. LANDIS,
Attorney General.

EXPENSES—WHEN AUTHORIZED TO BE PAID

August 25, 1931.

Dear Doctor:

This is in response to your favor of the 20th instant, in which you ask my opinion as to whether or not the members of the Board of County Commissioners are entitled to their actual expenses incurred in the transaction of official business.

It is my opinion that County Commissioners are entitled to such actual and necessary expenses as are required by them to be paid in the conduct and in the performance of the necessary official business pertaining to their office. This, I think, is a rule that has been followed in practically all of the counties in the State, and I feel that the law clearly authorizes the payment of these items.

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

LICENSE TAX—CONSTRUCTION OF STATUTE IN RE PAYMENT BY COUNTY ON AUTOMOBILES

November 18, 1931.

Dear Sir:

This refers to your favor of November 10th, relative to automobile license tax on automobiles owned by Duval County.

By reference to Section 14 of Chapter 15625, Acts of 1931, you will see that it appears to be clear that the Legislature in this act did not intend to exempt automobiles but limits the exemption strictly to motor trucks, trailers and semi-trailers owned and operated by the State or counties or municipalities.

Very respectfully,

CARY D. LANDIS,
Attorney General.

UNEMPLOYMENT BUREAU—BOARD AUTHORIZED TO EMPLOY
PERSON TO WORK WITH FEDERAL GOVERNMENT

January 20, 1932.

Dear Sir:

Replying to your favor of the 15th instant, in which you ask to be advised whether or not in my opinion the County Commissioners might legally employ a person to work in co-operation with the Federal Government in connection with an unemployment bureau in Dade County, when there is no provision made for such expenditure in your budget, permit me to say:

It is my opinion that the County Commissioners may legally employ such person and pay the salary from the contingent or emergency item in your general fund.

Yours very truly,

CARY D. LANDIS,
Attorney General.TAX LISTS, DELINQUENT—BOARD AUTHORIZED TO SELECT
NEWSPAPER FOR PUBLICATION

February 2, 1932.

Dear Sir:

This refers to your letter of January 29, in which you requested my opinion as to the intention of the law in the selection of a newspaper to publish the delinquent tax list and specifically whether or not it should be a paper of general circulation.

The statute requires that the delinquent tax list shall be published once each week for four consecutive weeks in a newspaper in the county, if there be a newspaper. Said newspaper to be selected by the County Commissioners at their regular meeting in February, and the newspaper so selected shall have been published continuously for not less than one year prior to their selection.

The Supreme Court of Florida, in the case of Parker, etc., vs. Evening News Publishing Company, reported in 54 Florida 544, uses this language:

"The power given by the statute to the County Commissioners to designate a newspaper to print the delinquent tax list implies discretion and includes the power to reconsider and to redesignate, when private rights are not directly injured, if the public require it; and the action of such officers is presumed to be in good faith for the public good."

The specific requirement of the statute is that it must be published once each week for four consecutive weeks in some *newspaper published in the county*, and that such newspaper shall have been continuously published in the county for not less than one year prior to this selection. Unquestionably, the purpose of the publishing of the delinquent tax list is to

treat the general tax paying public fairly, by endeavoring in the best reasonable way to the tax paying public on notice that certain definite taxes on certain definite property have not been paid, and giving the specific amount to be paid to clear such property of the taxes, then past due. Naturally, the wider the circulation of the newspaper, the more fully and better such objective of the law will be carried out.

However, there may be other things to be considered, but the general rule and duty, in my opinion, resting on your board is that you select a newspaper in accordance with the specific statutory requirements; and as to the generality of the circulation, etc., such selection should be made as the statute and the utterance of the Supreme Court indicate would carry out the full measure of good faith and protection of the tax paying public. As above quoted, the Court has stated that the act upon your part implies discretion and the presumption after selection is that your body has acted in good faith for the public good.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

CANDIDATES—MEMBERS COUNTY COMMISSIONERS AND
SCHOOL BOARD IN CERTAIN COUNTY SHOULD
BE NOMINATED BY DISTRICTS

February 19, 1932.

Dear Sir:

It is my opinion that Chapter 13761, Laws of Florida, Acts of 1929, by implication repealed Chapter 13601 of the same session of the Legislature.

Both chapters were enacted as general acts, and inasmuch as the latter act covered the same subject matter as the former, and the two acts being inconsistent, the last act enacted under the rule of construction would be held to have repealed the former.

While Chapter 13601 was enacted as a general act, it nevertheless applies only to one county, and I have no doubt that for that reason it would be held unconstitutional by the Supreme Court if the question should ever be raised.

I am, therefore, of the opinion that the candidates for County Commissioners and School Board members in your county should be nominated by districts in like manner as candidates for the same offices are nominated in other counties of the State.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CLERK CIRCUIT COURT—ACCOUNTING SHOULD SHOW
CERTAIN FEES AND COMMISSIONS

March 21, 1932.

My dear Sir:

This acknowledges receipt of your opinion dated March 15th, 1932, covering the question as to whether or not the salary paid to the Clerk of the Circuit Court for his services as County Auditor and Clerk of the Board of County Commissioners is required by law to be included in determining the amount of fees and commissions received by him as Clerk of the Circuit Court.

I have carefully read your opinion. It is a splendid presentation of the matter, but I cannot agree with your conclusions. This question has been before this office on several previous occasions when we have given it our careful study, and it is my opinion that under the Flood case and the various statutes and the Constitution, that if and when this question is clearly and concisely presented to the Court of last resort, that it will be held that the salary paid to the Clerk of the Circuit Court as County Auditor and Clerk of the Board of County Commissioners must be included in determining the amount of the fees and commissions received by the Clerk. Briefly, it is my conclusion that the Clerk receives this salary as Clerk of the Board of County Commissioners solely by virtue of the fact that he is Clerk of the Circuit Court and that, therefore, it is one of the fees or commission or emoluments of the office. I realize that the Flood case does not quite cover the exact situation, yet I am constrained to hold, so far as this office is concerned, that the salary of the Clerk as Auditor and Clerk of the Board of County Commissioners should be accounted for.

I wish further to state that this office has found no evidence of any bad faith whatsoever on the part of the Hon. Obe P. Goode or any of the other Clerks who have not made an accounting in accordance with my conclusions. In fact a number of the Clerks of the State have not heretofore included this particular salary as a part of the fees of their office, and I think possibly some of them did not make such accounting after taking advice of counsel.

Inasmuch as there has been some doubt on the question, I feel that no blame or censure whatever should be placed on any Clerk for not making this accounting up to this time.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

COUNTY FUNDS—CONSTRUCTION OF CHAPTER 15759, IN RE
TRANSFER OF MONEYS RECEIVED FROM
GASOLINE TAX

March 21, 1932.

Dear Sir:

This is in reply to your request for my opinion relative to the transfer of some funds in Liberty County.

It is my understanding that Chapter 15759, Laws of Florida, Acts of 1931, is applicable to Liberty County on the population basis as set forth in that chapter. This act provides among other things that any surplus accruing to the credit of any such county, which is Liberty County in the particular instance, after the requirements of the act are fully complied with, shall be by the State Board of Administration distributed and paid monthly to the County Road and Bridge Fund of the county (it being Liberty County in this instance). The General Law of the State, see Section 2304 of the Compiled General Laws, 1927, contemplates the transfer of county funds from one fund to another. This Section, to-wit: 2304, requires a proper resolution by the Board of County Commissioners, which resolution must be approved by the State Comptroller, and when this is done, the County Treasurer shall make the transfer of money from one fund to another in accordance with the resolution duly approved by the State Comptroller.

It is my opinion that this is not a matter that is required by the county budget. In other words, it is a borrowing of one fund from another to meet the budgetary requirements for which it develops there is not sufficient money in the fund to which the money is transferred, and would, therefore, not be chargeable to the budget from which it was borrowed in the sense that it would be an item that would have been required to be in the budget.

Further you ask the question as to whether or not there would be any impropriety in the Chairman of the Board of County Commissioners for approving a warrant payable out of the fund to which the money is to be transferred, and as to this I would state that this is the usual and regular course of procedure, and I cannot see how this would in any wise be improper, for the reason that the orderly course of procedure would be for the warrant to be approved by the Chairman of the Board of County Commissioners and afterwards executed by the Clerk of the Circuit Court under the seal of the county.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

COUNTY EXECUTIVE COMMITTEE—EXPENSE STATEMENTS
NOT REQUIRED TO BE FILED

April 6, 1932.

Dear Sir:

This refers to your favor of the 4th instant, in which you enclose copy of legal opinion rendered by Messrs. Hudson & Cason to the Board of County Commissioners of your county with reference to County Executive Committee candidates filing sworn statements of campaign expenses.

My predecessor, the Honorable Fred H. Davis, who is now a member of the Supreme Court, on a number of occasions while occupying the office of Attorney General ruled that:

"Candidates who were to be nominated were required to file campaign expense statements, but that inasmuch as Committee members were to be *elected* and not nominated, that such Committee members were not required to file such expense statements."

I find in a letter written by the Honorable Fred H. Davis when he was Attorney General under date of June 25th, 1930, to Mr. Charles S. Roberts of Mims, Florida, Judge Davis used this language:

"I am informed that this ruling was sustained by the Circuit Court at Pensacola in a contest involving the proposition."

It is not within my personal knowledge that any Circuit Court has ruled on the question, but I assume from Judge Davis' letter that the Circuit Court of Escambia County has ruled on the question and has sustained Judge Davis' opinion. This office does not feel that it would be justified in changing the opinion as heretofore rendered by Judge Davis, in fact, I concur in that opinion, however, the Clerk of the Circuit Court of your county or of any other county is not obliged to follow any opinion on this subject from this office, and if you should be dissatisfied with the Attorney General's ruling, there is no reason why you cannot adopt the opinion of Messrs. Hudson & Cason, attorneys for the Board of County Commissioners. It might be that under the circumstances it would be more practical and save you trouble if you were to require the filing of these expense statements, but it is the opinion of this office that those who are *elected* in the Primary, such as members of the County Executive Committee, are not required to file campaign expense statements.

This opinion is in line with a former opinion from this office which seems to be of long standing, as indicated by the letter above quoted from Judge Davis.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CANDIDATES—LIMITATIONS OF EXPENDITURES

June 10, 1932.

Dear Sir:

This refers to your favor of the 6th instant, in which you make inquiry as to the limitations of expenditures made by any candidate where there are two primaries and the candidates have to run in each.

It is my opinion that when the Legislature amended the Primary Law, including especially Section 421 as it was amended in Chapter 13761, that it was intended that the limitation of expenses upon the various candidates as set forth in Section 8183 of the Compiled General Laws was the limitation that was to cover all expenditures covering a nomination whether that nomination be the result of one primary or the result of a second primary. In other words, that the total limitation of expenditure is to cover the procuring of a nomination whether it is procured in one primary or by having to run in the second primary. It is clearly my opinion that the amount of limitation as set forth in Section 8183 of the Compiled General Laws should not be exceeded by any candidate in procuring a nomination.

Section 421 as amended requires the last statement, as you will note, to be filed within ten days after the second primary election. Thus, it seems to me, the purpose is clearly indicated that the candidate must set forth the total expense which he has had whether it is incurred in one or two primaries.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

COUNTY OFFICERS, DELINQUENT—IN RE DUTIES COUNTY COMMISSIONERS

July 6, 1932.

Dear Sir:

I am in receipt of your letter of the 3rd instant making inquiry respecting the duties of County Commissioners with reference to delinquent county offices.

Answering your inquiry, I beg to say that Sections 2196 and 1349, Compiled General Laws of 1927, appear to define the duties of County Commissioners in such cases.

Section 2196 reads as follows:

"To Inspect Offices—The County Commissioners of the several counties shall, at least once every three months, inspect the offices and records of the county Judge, Sheriff and Clerk of the Circuit Court and other officers of their respective counties, and see that the laws prescribing and regulating the duties of said officers are

being fully complied with; and it shall be their duty to report to the Governor of the State any failure on the part of such officers to perform their duties."

Section 1349, in part, reads as follows:

Delinquent Collectors to Be Reported to State Attorney.—It shall be the duty of the Comptroller and the judge of the County Court and of the President or Chairman of the Board of County Commissioners and the members of the said board representing the same, after sufficient time has expired to receive the reports required of the Tax Collector by law, and they have not received them, or if the collector has failed to turn over money collected, to either the proper State or County officer or officers, as provided by law, to report the same to the State Attorney of the Circuit in which the collector resides; and it shall be the duty of the State Attorney to institute such proper proceedings, both civil and criminal, as are authorized by this law and the law to which it is an amendment."

Particularly answering your question as to whether the County Commissioners are responsible for moneys taken in by Tax Collectors not coming into the hands of the County Commissioners, I beg to say that they are not responsible directly for such moneys. Their duties in this connection, however, are recited in the above statutes.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE ATTORNEY—WHEN ENTITLED TO REIMBURSEMENT
FOR FUNDS EXPENDED

July 12, 1932.

Dear Sir:

Replying to your letter of July 8, permit me to say we know of no statute expressly conferring authority upon the County Commissioners to return to candidates any unexpended money in the filing fee fund.

Former Attorneys General, Thomas F. West and Fred H. Davis, have both expressed the view that it was not the intention of the Legislature that any excess of this fund be returned to those paying it into the treasury; however, they expressed the view also that there is nothing in the law to forbid this being done, and that the County Commissioners probably have the power to do it. I concur in their views on this question.

You state that the State Attorney spent a certain amount in his investigation of the Sheriff's office, said investigation having been conducted pursuant to an indictment by Grand Jury, and you ask to be advised whether or not the County Commissioners would be authorized to reimburse him upon his receipted bills for such expense. I know of no statute

governing this subject; therefore, it is my opinion that, as a matter of governmental policy, if the County Commissioners are satisfied that the expenditures were incurred in good faith and were reasonable, the County Commissioners would be justified in paying the bills from the fine and forfeiture fund, or reimburse the State Attorney therefrom. However, I think that it would be proper for the County Commissioners to be guided in this matter by the advice of the County Attorney.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

TAX EXEMPTION—NOT ALLOWED ON CERTAIN PROPERTY

July 11, 1931.

Gentlemen:

This refers to your favor of the 8th instant, in which you request my opinion as to whether or not a certain building and property belonging to the Greater Miami Theatre Guild, Inc., a non-profit sharing corporation, is entitled to exemption from taxes under Section 897 of the Compiled General Laws, 1927.

I take it that the Greater Miami Theatre Guild, Inc., is an organization that would fall within one of the classes, to-wit: educational, literary, benevolent, charitable or scientific institutions. If I understand the facts correctly, they own a theatre and certain property, the most of which is used by the corporation for its purposes, however, they do rent some stores which form a part of the building, and they also rent a part of the building in the form of rooms and theatre offices. By a careful reading of Section "Third" of Section 897, it will be noted that property of the institutions above named is exempt from taxation, "but property of such institution which is rented wholly or in part and the rents, issues and profits only used by such institutions shall not be exempt from taxation, etc."

It seems to me clearly that the intention of the Legislature was to exempt property of educational, literary, benevolent and scientific institutions only when the property was used solely by these institutions, and that the statute means to specifically exclude any and all of such property where it is either wholly or in part rented.

It is my opinion, therefore, that the property as described and set forth in your communication is not exempt from taxation under Section 897 of the Compiled General Laws of Florida, 1927.

Very respectfully,

CARY D. LANDIS,
Attorney General.

BONDS—DISPOSITION AUTHORIZED

July 21, 1932.

Dear Sir:

This refers to your favor of July 19th in which you state that the Board of County Commissioners accepted from the Receiver of the Fidelity Bank of New Smyrna bonds in lieu of deposit in such bank.

I take it that when the bank failed a settlement was made by the County Commissioners with the liquidator, whereby a certain amount of bonds were taken in settlement of the deposit account. You state that all of these bonds that have been sold up to this time have been sold at par, plus accrued interest, and that more money has been realized than the amount of the County Commissioners' deposit, and that you still have on hand some of these bonds, and you ask the question as to whether or not the County Commissioners may sell these bonds at the best price obtainable.

It is my opinion, that under this statement of facts, the County Commissioners may sell and dispose of these bonds at the best price obtainable, even though that may be less than par.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SHERIFF'S FEES—METHOD TO PROCURE

July 29, 1931.

Gentlemen:

Replying to your favor of the 25th instant in which you state that there is a balance of several thousand dollars owing to the Sheriff of your county for services rendered during the fiscal year 1930-31, which was payable out of the fine and forfeiture fund, which fund was limited by law to a levy of two mills which has been inadequate, and in which you ask to be advised whether or not the sum owing to the sheriff and due after the end of the fiscal year can be considered as an indebtedness upon which a levy could be made under the name of outstanding indebtedness, or whether such a claim is still a charge against the fine and forfeiture fund only and can be paid only out of such fund, permit me to say:

We think that the board could in making a levy for outstanding indebtedness fund take into consideration the amount due and unpaid to the Sheriff and later with the consent of the State Comptroller transfer from the outstanding indebtedness fund to the fine and forfeiture fund.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BOARD COUNTY COMMISSIONERS—APPLICATION OF LAW IN
RE SALARY OF CLERK

December 2, 1932.

Dear Sir:

This refers to your favor of November 30.

As I understand the facts, your Board of County Commissioners adopted a budget for the year in which there was an item in the budget for \$1,500.00, salary of Clerk Circuit Court as County Auditor and Clerk to the County Commissioners. That there was another item: "Clerk Circuit Court recording and general court work, \$2,500.00." The question you raise is whether or not the Board of County Commissioners can take money from the \$2,500.00 item and thereby increase the \$1,500.00 to \$3,600.00. It is my opinion that this cannot be done. Section 2306 of the Compiled General Laws among other things has this language:

"The adoption of said estimates by said board shall give said estimates the force and effect of *fixed appropriations*, and the same shall not be *altered or amended or exceeded*. Nor shall the expenses estimated under one head be paid out of the estimate for any other expense."

We have a statute which authorizes the borrowing from a fund that has a surplus in it for the benefit of another fund where the taxes or sources of revenue did not produce sufficient money to meet the fixed appropriation, such borrowing to be made with the consent of the Comptroller, but this does not mean that you can increase or change the amount of the fixed appropriation.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

TAX COLLECTOR—DISPOSITION OF FUNDS IN RE PAYMENT
OF FIVE MATURED BONDS

December 6, 1932.

Gentlemen:

This refers to your favor of December 1st, relative to funds now in the hands of the Tax Collector, which under order of the Supreme Court are to be applied to the payment of five matured bonds and coupons now held by one R. W. Tharp.

It is my opinion that the Tax Collector is correct and it will be necessary for him to remit these funds to the State Treasurer, as required by the Board of Administration law, but in addition to sending these funds, it is my opinion that either he or the County Commissioners, probably the County Commissioners, should send the State Treasurer a certified copy of the mandate of the Supreme Court, in order that proper entry may be

made on the books of the State Treasurer, and that he may as these funds come in hand to him know just how they should be paid. I think it also necessary for you to send or have placed in the hands of the State Treasurer a certified copy of the Resolution of your Board of County Commissioners where they appropriated 1 and 1-2 mills of this levy to be used in accordance with the mandate of the Court in paying these particular bonds.

The mechanics for handling such situations is and has been, and I think properly, for the bond holder to deposit the bonds with the State Treasurer and then the partial payments are noted on the bonds from time to time as the bonds are paid. The State Treasurer, of course, issues a trust receipt for the unpaid balance on the bonds from time to time.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

COUNTY JUDGE

LICENSE, HUNTING AND FISHING, NON-RESIDENTS, DEFINITION OF RESIDENTS

January 8, 1931.

My Dear Judge:

It appears that I have not answered your letter of December 24th. I regret this delay, but the letter was misplaced which accounts for my failure to give it attention.

It was the intention of the Legislature in defining the word "resident" in Section 1 of Chapter 13644, Acts of 1929, to have the definition contained in that statute cover the very proposition about which you ask information.

In other words, it was the intention of the Legislature insofar as issuing game and fish licenses was concerned, not to allow any person to obtain a resident license unless he was only a resident of Florida but held a residence here for at least six months. The original bill provided twelve months. The purpose was to reach the very class of people that you mention in your letter. That is, the winter tourists who only spend four or five months in Florida.

It has been the practice of years in all game laws that have been heretofore enacted to deal with winter visitors as non-residents for the purpose of collecting licenses for hunting and fishing, and charge a higher rate than applies to the ordinary citizen in Florida who lives here the year around. These people are usually in a position to pay more and do not object to it. The game law is primarily intended to benefit the sportsman who is able to indulge in it, and the burden of paying the expense is placed more on him than on anyone.

The Legislature realized that it would not do to tax the voting population too heavily. Consequently, they define the word resident in the statute to cover the very point mentioned in your letter.

Yours very truly,

FRED H. DAVIS,
Attorney General.

COMMITMENTS—WHEN UNNECESSARY TO BE ISSUED

January 19, 1931.

Dear Sir:

This is in answer to your letter of January 9th on the above subject.

I think it is a better practice for the county judge to issue a commitment in every case where he imposes a fine in this court. This furnishes a record of the transaction and enables the Sheriff to collect the amount of fine and costs and release the prisoner upon payment.

Strictly speaking, however, where a person is fined in open court, and immediately pays his fine before being taken in custody by the Sheriff to enforce payment of it the issuance of a commitment is unnecessary.

Sections 8442-8445 must be construed in connection with Section 8425, Compiled General Laws. As will be noted from these sections, the statutes contemplate that where a fine is imposed the prisoner is entitled to twenty-four hours to pay the same before he is put to serving the alternative sentence.

Fines paid in open court at the time of sentence should be paid to the county judge, while fines paid afterwards should be paid to the Sheriff, pursuant to a commitment to be issued by the county judge.

Yours very truly,

FRED H. DAVIS,
Attorney General.

LUNACY CASES—FEES

January 27, 1931.

My Dear Judge:

Under Chapter 14527, Acts of 1929, Section 3658, Compiled General Laws (2312, R. G. S.) was so amended as to make the fees now applicable in lunacy cases the following:

Each examining physician	\$10.00
Each of the committmen	4.00
County Judge for appointing committee	2.00

This includes examining their report, making order, and rendering such

other services as may be required in the particular case on the part of the county judge.

Sheriff—Compensation such as would apply in ordinary cases for service of a civil summons for each paper served.

Yours very truly,

FRED H. DAVIS,
Attorney General.

BIRDS, NON-MIGRATING GAME—WHEN LAND OWNER WITHIN
RIGHT TO KILL

February 10, 1931.

My Dear Judge:

Where a person has enclosed premises and non-migratory game birds or fur-bearing animals have been found destroying the crops, fruit, game or stock on the premises, the owner of the enclosed premises whose property is being destroyed would have the right to kill such non-migratory game birds or fur-bearing animals on his own property during any season and without license except by poison, for which a special permit would have to be obtained from the State Game Commission.

However, the right to kill non-migratory game birds or fur-bearing animals under the terms of Section 52, Chapter 13644, Acts of 1929, depends absolutely upon the necessities of the case and is like the right of killing a human being in self defense. The nature of the defense and the necessity for it must be established by the defendant, who would otherwise be guilty of violating the law.

Yours very truly,

FRED H. DAVIS,
Attorney General.

MARRIAGE CEREMONY—CLERK NOT AUTHORIZED TO
PERFORM

April 3, 1931.

Dear Sir:

Replying to your favor of the 2nd instant, I beg to advise that in Section 5853 of the Compiled General Laws of Florida 1927, which provides the various persons who may perform the marriage ceremony, is included "*all judicial officers.*" This in my opinion makes the performance of the marriage ceremony a judicial act.

Section 5185 of the Compiled General Laws of Florida 1927 empowers the county judge to appoint a clerk, but specifically limits the clerk of the county judge to the exercise of all *non-judicial functions*. Therefore, it is clearly my opinion that the clerk of the county judge does not have authority as such clerk to perform or solemnize the rites of the matrimonial contract.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES—JUSTICE OF THE PEACE AND COUNTY JUDGE

June 1, 1931.

Dear Judge:

Replying to yours of the 27th instant, permit me to say the former Attorney General, in an opinion rendered under date of August 28th, 1930, to Honorable Casey Thigpen, Justice of the Peace, St. Petersburg, Florida, held that the Justice of the Peace has no right to charge the county for issuing a search warrant for intoxicating liquors when no liquors are found in the search. He failed to cite the section of the law upon which this opinion is based, and we have made diligent search of the statutes in an effort to find one which prohibits the county judge charging for issuance of a search warrant, but have failed to find such statute. We do, however, find that Section 7642 of the Compiled General Laws prohibits the Sheriff, deputy sheriff, constable or police officer executing search warrant charging the county unless the search reveals the fact that the person named therein is guilty of the offense charged.

Relative to the question of whether or not a county judge is authorized to bill the county for cases where he acts as a committing magistrate, permit me to say we regret that we are compelled by the provisions of Section 8486, Compiled General Laws, to state that it is our opinion that the county judge is not entitled to fees unless an information is filed or an indictment is found. Permit me to suggest that you read this statute, and if you do so you will, of course, understand that this opinion is in accord with the statute.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORONER—MILEAGE FEES ALLOWED

June 6, 1931.

Dear Judge:

Replying to yours of the 3rd instant permit me to say that Section 8534, Compiled General Laws of 1927, reads as follows:

"The Coroner's fees shall be as follows: Summoning jury, taking inquisitions on dead body, and making return thereof, \$3.00, and five cents for each mile to and from the place of inquest by the nearest practicable route, to be paid by the county. For any other official service, he shall receive the same fees as sheriffs."

It appears, according to the provisions of the Section above quoted, that you as county judge would be entitled to mileage when acting as Coroner.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SALARY—LAW REQUIRES REPORT TO INCLUDE

July 16, 1931.

My Dear Judge:

This refers to your letter of July 14th, in which you request my opinion as to whether or not the salary of the Judge of the County Court of Orange County, Florida, pursuant to Chapter 10299, Laws of Florida, 1925, is to be reported in accordance with the requirements of Section 2867, of the Compiled General Laws, 1927.

It is my opinion that such salary should be reported. Chapter 10,299, Section 5, provides that the County Judge of Orange County, Florida, shall receive a salary of \$2,000.00 per annum, and a fee of \$1.00 for each civil case docketed in said Court, etc. Section 2867 of the Compiled General Laws of Florida, provides that each official shall render to the Board of County Commissioners at the expiration of each semi-annual period a sworn statement "as now made to the State Comptroller, etc." The law requiring the report to be made to the Comptroller is Section 472 of the Compiled General Laws, which states:

"Each State and county officer who receives all or any part of his compensation in fees or commissions, or other remuneration, shall keep a complete record of all fees and commissions or other remuneration collected by him and shall make a report to the State Comptroller of all such fees and commissions or other remunerations semi-annually, etc."

In the case of James E. Flood, etc., vs. the State of Florida, our Supreme Court rendered its decision on June 24th, 1930, and used this language:

"The facts are, that including Chapter 11954, Acts of 1927, the Legislature has made four attempts to institute a new and different policy for compensating county officers. As often as passed, the Act of the Legislature has been before this Court for consideration. Four successive attempts by the Legislature with as many enunciations by this Court as to the effect of such attempts should leave no doubt on the part of any one as to the legal status of the matter. The act now before us (Chapter 11934, Acts of 1927), fixes the compensation of county officers at a prescribed portion of the net income from the office. Such a basis of classification for compensating county officers was approved by this Court in State ex rel., Buford vs. Shepard, supra."

It seems to me clear that under Section 2867 of the Compiled General Laws, 1927, and the other sections of the same chapter, to-wit: Chapter 11954, Acts of 1927, that each officer must report all moneys received by him,

whether in the nature of salary, commissions, fees, or any other remuneration, where it is received by virtue of his occupying the office. Thus it is that I am clearly of the opinion that you should report the salary of \$2,000.00 provided for by Chapter 10299 of the Laws of 1925.

Very respectfully,

CARY D. LANDIS,
Attorney General.

PAUPERS—IN RE BURIAL EXPENSES

July 16, 1931.

Dear Judge:

This is in reply to your favor of July 11th, addressed to Governor Doyle E. Carlton, who has passed the same on to this office for reply.

You make inquiry about the burial expenses of a pauper. The fourth sub-section of Section 2153, Compiled General Laws of Florida, setting forth the powers and duties of the County Commissioners of each county, provides that said board shall "have care and provide for the poor and indigent people of the county." As a matter of practical mechanics in working out the care of the poor, in most counties the Board of County Commissioners make some arrangements with some undertaker to take care of the burial arrangements, coffins, etc., of the poor and indigent of the county. It is unquestionably their duty to do so, and it is for the Board of County Commissioners to work out some practical plans for handling this situation.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

PISTOL—LICENSE NOT REQUIRED TO CARRY IN AUTOMOBILE

August 13, 1931.

Dear Judge:

Replying to your favor of recent date, in which you ask to be advised whether or not under Section 7202, Compiled General Laws, 1927, it is unlawful for a person to carry a pistol in an automobile without a license, permit me to say:

Former Attorney General Davis ruled that it is not a violation of the statute mentioned for the owner of an automobile to carry a pistol or rifle in his car for his own protection while traveling. The law does not permit a person to carry a pistol either concealed or not concealed on his person without having a license to do so. Inasmuch as Former Attorney General Davis held that the carrying of a pistol in an automobile, not on the person, is not a violation of the statute, his ruling will not be disturbed, unless the Supreme Court decides to the contrary.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FISH LAW, LOCAL—COUNTY JUDGE NOT AUTHORIZED TO
DECLARE UNCONSTITUTIONAL

August 19, 1931.

Dear Judge:

Replying to your favor of the 13th instant, in which you state that the last Legislature passed an act regulating the taking of fish from the fresh waters of Sumter County, that you have decided that the act is unconstitutional, but that before notifying your Clerk of your decision your Clerk issued two licenses and collected therefor \$4.00, and in which you ask what disposition you should make of the \$4.00 since you have decided the act of the Legislature to be unconstitutional, permit me to say:

Acts of the Legislature are usually presumed to be constitutional until they have been declared to be unconstitutional by the highest court presiding over the territory in which the act is supposed to be operative, and until the Circuit Court of Sumter County or the Supreme Court of Florida declares the act to be unconstitutional, it is my opinion that you would be authorized to issue licenses under the provisions of the act. If the two licenses which you have issued heretofore are revoked you should refund the money collected to the parties from whom it was collected.

Yours very truly,

CARY D. LANDIS,
Attorney General.OCCUPATIONAL LICENSE TAX—LAW REQUIRES LIST TO BE
PUBLISHED

August 19, 1931.

Dear Judge:

Replying to your favor of the 12th instant, in which you ask to be advised whether or not it is necessary under Section 26, 27 and 28 of Chapter 14491, Laws of 1929, for the county judge to have published in a newspaper a list of the state and county occupational licenses once in each year and whether or not the list should be published at any particular time during the year permit me to say:

We agree with you and the County Commissioners on the proposition that the publication of the list is an unnecessary expense, but in view of the language of the statute we are constrained to say that it would appear to be advisable to comply with the provisions of the statute requiring that the list be published. We do not think it makes any particular difference what time during the year the list is published.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WILLS—RECORDATION NECESSARY IN COUNTY WHERE
PROPERTY DEVISED IS LOCATED

August 18, 1931.

Dear Judge:

This refers to your favor of the 14th instant.

It is my opinion that the probate of wills in any of the States, territories and districts of the United States or any foreign country in order to have the same force and effect as to the disposition of the property therein devised or bequeathed as to probate of such wills executed in this State, must be recorded in the County Judge's Court of the county wherein the real estate or property is located. It seems to me that Section 5475 of the Compiled General Laws clearly requires this to be done.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

PROHIBITION LAW — IN RE JURISDICTION COUNTY JUDGE
AND CLERK CIRCUIT COURT

August 13, 1931.

Dear Judge:

Replying to your favor of the 10th instant, in which you ask to be advised regarding the jurisdiction of the County Judge and the Clerk of the Circuit Court under provisions of Section 7626 and 7627, Compiled General Laws, permit me to say:

It is my opinion that where liquor and property used in violation of the Prohibition Law are seized and a trial is held, the Court trying the case is authorized to order the destruction of the liquor and other property seized, which the Court holds might be used to facilitate the violation of the Prohibition Law; but, where there is no trial and liquor and property are seized, that the Judge of the Circuit Court has exclusive jurisdiction, under the provisions of Section 7627, Compiled General Laws.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES—SECTION 3084, R. G. S., APPLICABLE

September 25, 1931.

Dear Judge:

Replying to your favor of the 23rd instant, permit me to say:

The fees payable to the county judge are those provided for by Section 3084 of the Revised General Statutes of 1920. The Supreme Court of Florida, in the case of *Murphy vs. Harllee*, decided December 29th, 1930, and re-

ported 131 Southern, said that the fees are those provided by the Section above cited. And that the later act only increased the fees of the clerks of the Circuit Court.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BONDS—CERTAIN DUTIES REQUIRED

October 14, 1931.

Dear Judge:

Replying to your letter of the 6th instant, I beg to advise that in my opinion it is your duty to safely keep the bonds required of tax collection agencies under Section 1341 of the Compiled General Laws of Florida 1927.

I do not think there is any liability against you by reason of approving bonds which may not be worth the sum required by law, but that the statute makes it your duty to use your best judgment in seeing that the bonds are worth the face amount. When you have exercised this judgment and discretion to the best of your ability, I think you have done all you are required to do.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ADMINISTRATION—NOT GOOD BUSINESS POLICY FOR LIQUIDATOR TO ACT

October 26, 1931.

My Dear Judge:

This refers to your letter of October 15th, in which you ask my opinion as to whether or not a liquidator of a closed bank has legal authority to carry forward and close up the administration of an estate.

It is my opinion that the liquidator of any closed bank stands in the place and stead of the closed bank, but the primary purpose is to close the matter out, and, therefore, it seems to me that the liquidator would have the legal authority to administer an estate; but, as a matter of business policy and practice, it is the purpose of the liquidator to close the bank's matters and affairs at an early date as is practical, and therefore, it seems to me, it would be best for the liquidator to surrender trusts of this nature and when surrendered the Probate Court should qualify other administrators, etc.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

GUARDIAN—IN RE RECORDING ACCOUNTS RENDERED

November 2, 1931.

Dear Judge:

This refers to your favor of October 27th, in which you call my attention to Section 5198, Compiled General Laws of Florida.

This section provides that the accounts rendered by guardians and settled by the county judge shall be recorded. And I think this statute should be complied with by your office as well as all other county judges in the State.

The question has arisen in a number of the counties and is constantly arising as to whether or not this means that all of the accounts that are filed for payment shall all be recorded, or whether simply the statement of account made by the guardian is the document or paper that is to be recorded, and that the various claims and accounts simply be filed.

It frequently comes up as a matter of practical application that the recording fees of all of the items of account, large, small, and otherwise, amounts to a sum that is apparently disproportionate to the size of the estate. And I think in a number of the counties, as a practical matter, where there are great lists of small accounts filed, that these are not recorded, but that the statement of account made by the guardian in the settlement with the Court is filed and recorded. Of course, if the accounts and claims that have been paid are attached to and made a part of the guardian's report, I assume that as a matter of practical application, there would be nothing left to do except to record the entire matter.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

COUNTY JUDGE'S COURT—RULE DAY, FEES

December 4, 1931.

Dear Sir:

Replying to your favor of the 2nd instant, permit me to say the rule day for county judge's court is designated by Section 4228 and is the first and second Mondays of each month.

The conviction fee for the prosecuting attorney should be paid from the fine and forfeiture fund to which all fines and costs should be deposited.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES—IN CASE OF MISUNDERSTANDING MATTER SHOULD BE
REFERRED TO STATE AUDITOR

December 10, 1931.

Dear Madam:

Replying to your favor of the 5th instant, permit me to say:

We see no reason why there should be any misunderstanding between yourself and the members of the Board of County Commissioners of your county relative to the fees to be charged by the county judge.

Section 5200, Compiled General Laws, prescribes the fees to be charged by the county judge as Judge of Probate, and Section 3084, Revised General Statutes of 1920, prescribes the fees which may be charged by the county judge in criminal cases.

The forms sold by some of the printing companies are inaccurate, and this office does not vouch for the accuracy of any of them. Questions of this nature should properly be submitted to the State Auditor, whose duty it is to check the county officers' cost bills, and this office will render opinions to him when so requested.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COSTS—WHEN SHOULD BE REQUIRED TO BE DEPOSITED IN
ADVANCE

December 19, 1931.

Dear Judge:

Replying to your favor of the 14th instant, permit me to say it is my opinion that where a person not an officer charges another with passing worthless checks, false pretense, or the beating of hotel and boarding house bills, such person should be required to deposit the costs before process should issue, as these are offenses committed against the complainant.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DISABLED WAR VETERAN—WHEN ENTITLED TO FREE LICENSE

December 19, 1931.

Dear Judge:

Replying to your favor of the 14th instant, permit me to say:

A disabled war veteran is entitled to a free license to engage in an occupation in the county of his residence, provided he is a qualified elector of such county and is unable to perform manual labor. Under no circumstances should a disabled war veteran be granted a license free of charge to engage in an occupation or business in any county other than the county of which he is a resident and a qualified elector.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SUPERINTENDENT OF INDUSTRIAL SCHOOL FOR BOYS—
AUTHORIZED TO REFUSE COMMITMENT OF BOYS
UNDER CERTAIN CONDITIONS

December 31, 1931.

Dear Judge:

Replying to your favor of the 22nd instant, in which you request me to advise you what lawful authority the Superintendent of the Florida Industrial School for Boys, has, if any, to refuse to accept a boy committed to that institution by a Court of competent jurisdiction, permit me to say Chapter 15,719, Laws of Florida, Acts of 1931, making an appropriation for the Florida Industrial School for Boys contains the following provision:

"Provided, that the total amount expended by this Department annually shall not exceed \$25.00 per month per capita on average number of inmates, *average number of inmates not over 460*, the total amount not to exceed \$140,000.00."

In view of the fact that the Legislature limited the number that may be received into the institution to an average of 460, it became necessary for the board to authorize the superintendent of the institution to decline to accept those committed when the average then in the institution amounted to the number specified in the statute. The board also authorized the superintendent to refuse to accept any child under 12 years of age.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES—CERTAIN LAW DOES NOT APPLY TO HILLSBOROUGH
COUNTY

January 19, 1932.

Dear Sir:

Replying to your favor of the 14th instant, in which you request my opinion on the question of whether or not the county judge is entitled to the same fees as are provided by Chapter 15621, Acts of 1931, for justices of the peace in counties of the State of Florida having a population of more than 100,000 and less than 150,000 according to the last Federal census, permit me to say this chapter does not apply to any county in the State of Florida, except Dade County.

It could not apply to Hillsborough County because according to the last Federal census Hillsborough County has more than 150,000 population, according to the last Federal census. In fact, the last Federal census shows Hillsborough County as having a population of 153,519.

Even if Hillsborough County came within the population specified in the act, I doubt that under the decision of the Supreme Court in the case of *State ex rel Murphy vs. Harllee*, 100 Fla. 1562, 131 So. 866, the county

judge would be entitled to the fees prescribed by the chapter under consideration. And I very seriously doubt the validity of Chapter 15621 because I am under the impression that the Supreme Court has held that fees of county officers must be uniform throughout the State.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DANCE HALL—WHEN LICENSE TAX REQUIRED

February 25, 1932.

Dear Sir:

Replying to your favor of the 19th instant, I beg to advise that Sub-division J of Section 15 of Chapter 14491, Acts of 1929 reads as follows:

"Each person, firm or corporation conducting a dance hall *for profit*, whether within or without city or town limits, shall pay a license tax of one hundred dollars."

It would, therefore, appear that the question of license depends upon whether or not the hall is operated for profit.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BEVERAGES—WHEN LAW DOES NOT PROHIBIT MANUFACTURE OR SALE

February 15, 1932.

Dear Judge:

Replying to your favor of the 20th instant, in which you ask me to give you an opinion on the following matter, to-wit:

"A corporation known as the Citrus Fruit Beverage Company, Inc., has a formula for making a syrup out of citrus and other fruits, which syrup is made up into a soft drink and sold at soda fountains, the syrup being made by the following processes:

(a) The juices from the citrus fruit are fermented into a wine containing about 9% alcohol.

(b) This wine is distilled at a certain temperature and vacuum, removing the alcohol to less than one-half of 1%, this distillate retaining all of the fruit flavors and other qualities of the fruit.

(c) Out of the distillate a syrup is made to be used at soda fountains, containing all the natural flavors and food values of the fruits."

permit me to say, with reference to whether or not such process and sale as outlined above would be lawful under the laws of Florida, that the laws of Florida do not prohibit the sale of beverages containing less than one-half of 1% alcohol.

However, Section 7635, Compiled General Laws, 1927, reads as follows:

"Whoever in this State shall have in his possession or under his custody or control any still, still piping, still apparatus, or still worm, or who shall have in such possession or under such custody or control any other piece, part, or parcel of any such still, still piping, still apparatus, or still worm, designed or adapted for the unlawful manufacture of distilled intoxicating liquors in whole or in part, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding \$500 or imprisonment not exceeding six months."

It will be noted that the Section quoted above makes the possession of a still or any part thereof, designed or adapted for the *unlawful manufacture* of distilled intoxicating liquors, a misdemeanor. If the fermented fruit juices run through the still came out containing less than one-half of 1% of alcohol, it is my opinion that it could not be reasonably said that the still used was designed or adapted for the unlawful manufacture of distilled intoxicating liquors, the possession of which would be a misdemeanor.

The question of whether or not a still used as stated above was designed or adapted for the unlawful manufacture of distilled intoxicating liquors would be a question of fact to be proven in case of a prosecution. It is hardly probable that the prosecuting officers of this State would feel disposed to prosecute a person or firm in possession of a still, where the still was not being used for unlawful purposes, but was being used for the manufacture of a beverage, the sale of which is declared by the laws of Florida to be legal.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CITIZENSHIP—NOT LOST UNDER CERTAIN CIRCUMSTANCES

February 25, 1932.

My Dear Judge:

This refers to your favor of the 23rd instant, relative to certain citizens of Florida who are registered voters who have paid their poll tax, and who because of their being employees of the Bagdad Land & Lumber Company are forced to move into the State of Alabama for the purpose of carrying on their work and labor.

The right to vote depends upon one's domicile. If these men are simply moving into Alabama temporarily, to be near their work for the time being, and not with the intention of moving their home or domicile from the State of Florida, then they continue to be citizens of Florida and have a right to vote here. If, on the other hand, they are moving out of the State with the idea of abandoning Florida as their home and of making

Alabama their future home, then they will have lost their right to vote in this State. If these people have no thought of abandoning Florida as their permanent home and are simply moving about temporarily, with the idea of returning to Florida as their home, then they have not lost their right of citizenship and their right to vote.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

POOL ROOM—LICENSE REQUIRED FOR EACH PLACE
OF BUSINESS

March 30, 1932.

My Dear Judge Geoger:

This refers to your favor of the 28th instant, relative to pool room license.

The occupational license tax is levied on the business, and in the case of pool rooms the license is measured by the number of pool tables. As I understand it, the party in question having anticipated business for which he had three tables, and he paid a license tax accordingly. Afterwards the business became dull and he moved one table out to another place and established another business. It is my opinion that he will have to pay license tax on the other place of business, based upon the law requiring that license tax be paid on the number of tables. It is true that this may work a hardship but I find nothing in the law covering the question, or that will permit the paying of license tax on tables in one establishment with the privilege of moving them to another location or establishment.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INHERITANCE TAX—FEES TO BE PAID BY COMMISSIONER
OF REVENUE

April 15, 1932.

Dear Judge:

I am in receipt of your letter of the 2nd instant, relative to the Inheritance Tax Act, Chapter 14739 of 1931.

You refer to Sections 26 and 27 of the Act, and make inquiry whether the fees should be paid direct to the County Judge by the Commissioner of Revenue, or whether the fees should be taxed as costs and assessed against each respective estate.

In reply to your inquiry, I beg to say that in my opinion the fees should be paid by the Commissioner of Revenue and not taxed as costs against the respective estates.

You make further inquiry whether the County Judge shall require a report to the Commissioner of Revenue, where the value of the estate is less than Two Thousand (\$2,000.00) Dollars, and the beneficiaries of the decedent are husband and wife, or children or grandchildren.

In reply thereto, I beg to advise that under Section 25 of the above mentioned statute reports in such cases are not required.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REGISTRATION—LAW REPEALED AS TO REGISTERING
BEFORE TAX COLLECTOR

April 18, 1932.

Dear Judge:

Section 370 of the Compiled General Laws of Florida, 1927, authorizing the registration of electors before the tax collector at the time of the payment of poll taxes, was repealed by Section 6 of Chapter 13761, Acts of 1929.

Section 268 of the Compiled General Laws of Florida, 1927, was originally enacted as Section 3 of Chapter 12317, Acts of 1927, which was passed under the guise of general legislation with a local application, and applies only to Walton County according to the State Census report for 1925.

Yours very truly,

CARY D. LANDIS,
Attorney General.

VOTERS, ABSENTEE—METHOD OF VOTING

May 10, 1932.

Dear Judge:

Replying to your favor of the 7th instant, permit me to say I find nothing in the statute permitting the county judge or his clerk to assist an elector in marking his ballot.

I do not find a statute authorizing the county judge's clerk to take the affidavit of an absentee voter. Under the statute an absentee voter is one who will not be within the county on the day of the election. The statute provides that a person who expects to be absent from the county or the State on election day may go before the county judge and make an affidavit to that effect not more than 15 days nor less than 3 days prior to the day of the election, and that he may be permitted to cast an absentee

voter's ballot. But it must be done not less than three days prior to the election.

The information contained in this letter also answers the inquiry in your letter addressed to me under date of May 6.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SECOND PRIMARY—ABSENTEE VOTER'S BALLOT
MAY BE CAST

May 25, 1932.

Dear Judge:

Replying to your favor of the 23rd instant, in which you state that an elector of your county will desire to vote an absentee voter's ballot before the county judge for the second primary, permit me to say the statute provides that an absentee voter's ballot may be cast before the county judge not more than 15 days nor less than three days prior to the day of the primary election.

Inasmuch as 21 days will elapse between the first and second primary, if the ballots for the second primary have been prepared and furnished to the county judge 15 days before the second primary, I see no reason why such person should not be permitted to cast an absentee voter's ballot for the second primary, just the same as may be done prior to the first primary.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LUNACY PROCEEDINGS—IN RE COMPENSATION
EXAMINING PHYSICIANS

May 29, 1931.

Dear Judge:

Replying to yours of the 27th instant relative to the compensation provided by law for examining physicians and other members acting in lunacy proceedings, permit me to say that you should be governed by Chapter 14527, Acts of 1929.

We note that you appear to be somewhat confused regarding the Compiled General Laws of 1927. The Compiled General Laws of 1927 never having been adopted as the laws of Florida by the Legislature, the compilation is not in fact the laws of Florida. You will note that the Governor's proclamation states that the compilation shall be taken and held in all courts of this State as prima facie evidence of the tenor of all public statutes of the State of Florida of a general and public nature enacted prior to July 1st, 1927, and shall be so received and accepted in all the courts of the State of Florida.

Inasmuch as Chapter 14527 was enacted subsequent to the 1927 compilation, such chapter would be the governing law on the subject at this time, regardless of whether or not the Legislature had adopted the 1927 compilation as the laws of Florida.

We are advised that there is now a bill pending in the Legislature fixing the fees of the physicians at \$5.00 each, and each of the other committeemen at \$2.00, but we do not know whether or not this bill will become a law.

NOTE—The bill mentioned above passed and is now known as Chapter 14758, but this law applies only to counties having a population of more than 60,000 and not more than 100,000 inhabitants according to last State or Federal census.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BALLOTS, ABSENTEE—CONSTRUCTION OF LAW

May 30, 1932.

Dear Judge:

Replying to your favor of the 27th instant, permit me to say Section 432, Compiled General Laws, requires the canvassing board to record absentee voters' ballots upon the poll book of the proper precinct in their possession, in the same manner as clerks of elections record votes, provided the canvassing board shall find the name of such absentee voter duly registered among the voters of such precinct, as required by law in other cases of resident voters, and add the same the total of the poll sheet in arriving at the total result of the election in the precinct where the voter lives.

I do not think in doing this that it is necessary for the canvassing board to violate the provisions of the 1929 Act, which requires the canvassing board to compile the results of the primary election solely from the returns and certificates of the inspectors. I think this provision means that the canvassing board should not change the figures made by the inspector, but that the absentee votes should be added to the total of the poll sheet in arriving at the total result of the election. I presume that where the term "poll sheet" is used, it means "tally sheet."

Replying to your second question, permit me to say absentee ballots received later than the third day after the primary election should not be counted, because Section 11 of Chapter 13761, Acts of 1929, requires the canvassing board to certify the result of the election on or before the third day after the primary.

Replying to your third question, permit me to say a deputy supervisor of registration could not act as a member of the canvassing board for the supervisor of registration, because Section 407, Compiled General Laws,

provides that in case of inability of county judge or supervisor to act, the chairman of the board of county commissioners shall designate a member of the board of county commissioners to act in his place. See also Section 11, Chapter 13761, Acts of 1929.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INHERITANCE TAX LAW—INTERPRETATION IN RE
DECEDENTS

June 19, 1931.

Dear Sir:

This refers to your favor of the 17th instant.

I find nothing in the Act that requires any different inventory to be filed with the County Judge's Court than such inventory as is now required under the State law. The complete inventory of all of the property of the decedent is required by the Act to be filed with the State Comptroller.

Section 25 of the Act is largely an administrative Section, and estates of less value than \$2,000.00 when the beneficiaries are husband and wife or children or grandchildren of the decedent are clearly not taxable and therefore, the policy is laid down that the death of the owner of such estates need not be reported by the County Judges to the State Comptroller. It is my opinion that the County Judge could satisfy himself with reference to this valuation by the sworn statement of a person seeking the probate of the Will or by the Administrator or Executor. Different forms will be worked out by the Comptroller's office and transmitted to you at a later date.

The estates of all decedents whose property is subject to the laws of the State of Florida is under the Act deemed prima facie liable for estate or inheritance tax, and until the State Comptroller has issued his receipt showing that the taxes due have been paid in full, or showing non-liability of the estate for tax, the estate should not be closed. It is my opinion that this should be applicable to your office from now on.

All of the books, forms, etc., necessary for the administration of the work in your office with reference to these matters will be furnished you in due course by the Comptroller's office.

Very respectfully,

CARY D. LANDIS,
Attorney General.

OFFICE—WHEN PERSON ELIGIBLE TO HOLD STATE
AND MUNICIPAL

July 12, 1932.

Dear Judge:

Replying to your letter of July 9, permit me to say a person, if qualified, may hold a State office and at the same time be a municipal officer. A person cannot hold a State and county office at the same time. He may hold a State or county and city office at the same time.

The Justice of the Peace is a State officer and to be eligible to hold such office, he, of course, has to be an American citizen; however, this would not apply to a municipal office, unless the charter or ordinance adopted expressly stated that only citizens could hold office in the municipality.

Very truly yours,

CARY D. LANDIS,
Attorney General.VOTERS ABSENTEE—COMPENSATION TO COUNTY JUDGE FOR
TAKING OATH NOT AUTHORIZED

July 15, 1932.

Dear Judge:

I am in receipt of your letter of July 11, making inquiry as to payment of County Judges for taking the oath of absentee voters and other services under Section 436, Compiled General Laws of 1927.

In reply, I beg to say that I find no authority for payment for such services. In this connection you are doubtless aware that there are many services required of officials for which there are no provisions for remuneration. See *Rawls et al., vs. Nolan, Tax Assessor*, 98 Fla. 103, 122 So. 222, where it is recited in the first head-note that "Public officers have no legal claim for official services rendered, except when, and to the extent that, compensation is provided by law, and when no compensation is so provided rendition of such services is deemed to be gratuitous."

Respectfully yours,

CARY D. LANDIS,
Attorney General.PUNISHMENT—IMPRISONMENT JURISDICTION APPLICATION
OF LAW

September 15, 1932.

Dear Judge:

Replying to yours of September 10th, permit me to say Section 7103, Compiled General Laws, provides that whenever punishment by imprisonment is prescribed and the said imprisonment is not expressly directed to be in the State Prison, it shall be held and deemed to be in the county jail.

Section 7104, Compiled General Laws, in fixing punishment for misdemeanors, provides that when punishment for commission of crimes other than felonies in this State, *when not otherwise provided by statute*, shall be a fine not exceeding two hundred dollars or imprisonment not exceeding ninety days, or both, at the discretion of the Court.

Section 8278, Compiled General Laws, fixes the jurisdiction of county judges in counties where there is a county court. In such counties the county court has jurisdiction of all misdemeanors.

Section 8295, Compiled General Laws, provides that the county judge will have and exercise such criminal jurisdiction as is held and exercised by the justice of the peace, except that his jurisdiction shall extend throughout the county.

Section 8289, Compiled General Laws, provides that in counties where there are no county courts or criminal courts of record, the justice of the peace shall have power to hold court to try and determine all misdemeanors committed in his respective district, which are punishable by fine not exceeding five hundred dollars or by imprisonment not exceeding six months or by both such fine and imprisonment.

The particular statute referred to in your letter provides imprisonment for a period not exceeding one year. Unless there is a county court, it does not appear that you would have jurisdiction, as county judge, to try an offender under this statute.

Very truly yours,

CARY D. LANDIS,
Attorney General.

COUNTY JUDGE—METHOD FOR FILLING UNEXPIRED TERM

October 17, 1932.

Dear Madam:

Replying to your letter of the 14th instant, I beg to advise that a County Judge to fill the unexpired portion of the present term, that is, the time between November 8th and the first Tuesday after the first Monday in January following may be elected by writing in the name of such person on the General Election ballot used at the General Election November 8th and properly voting the same as required by law. Neither the Constitution or law contemplates a special election for that purpose.

Very respectfully yours,

H. E. CARTER,
Assistant Attorney General.

COUNTY PROSECUTING ATTORNEYS

TAX SALE CERTIFICATES—METHODS TO PURSUE TO PREVENT
CUTTING OF TIMBER FROM LAND

September 5, 1931.

Dear Sir:

Your letter of August 27th addressed to Hon. Ernest Amos, State Comptroller, has been handed to me for reply.

As I understand the situation, the Board of County Commissioners of your county find that there are certain people in your county who are cutting timber and taking turpentine off of and from the land against which there are outstanding tax sale certificates held by the State, and that the County Commissioners are desirous of having this stopped in the protection of the rights of the State and county in their taxes.

It is true that criminal prosecution might be instituted, but it is my advice that this matter should be handled by way of injunction in the Circuit Court. This has been the method pursued throughout the State so far as I know. It is much more effective than criminal prosecution, and it has been my advice where the County Commissioners wanted this done to have them notify me and I will then in turn notify the State Attorney and request him to proceed in this way. The County Commissioners put up the small amount of costs that are necessary, and all of the suits that have heretofore been instituted I am advised have been successful.

I assume that the State would have no objection to the county employing you or any other counsel they may see fit to handle the matter, but the State itself would prefer that this matter be done by injunction rather than by criminal prosecution.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

PERSONAL PROPERTY—APPLICATION OF STATUTE IN RE
REMOVING FROM STATE WHILE UNDER RETAIN
TITLE CONTRACT

March 4, 1931.

Dear Sir:

Where conditional sale contracts are involved it appears to me that Section 7320, Compiled General Laws, is the only Section of the statutes which could be applied to a person who removed the property subject to the conditional sale contract from the county where the contract was made into some other place or out of the State.

Section 7316 and Section 7318 refer entirely to property which is subject to a written or statutory *lien*. A conditional sales contract would not be a lien, but would be a retention of title. Therefore, whatever prosecution is had must come under Section 7320.

That Section provides that it shall be unlawful for any person who is in possession of personal property under any conditional sale contract to sell, conceal or "dispose of" such personal property. It appears to me that the words "dispose of" used in this statute are broad enough to include any act of a person in so moving the property from the jurisdiction of the courts, which would have power to enforce the recovery of the property under the conditional sales contract as to make it impossible to recover such property.

In other words, the phrase "to dispose of" is apparently not limited to selling or making conveyance of the property, but includes any act of the defendant in doing something with the property which prevents the enforcement of the conditional sales contract.

It is a well known fact that Section 7320 was enacted to protect persons who hold conditional sales contracts on personal property. The construction I have given the statute is in harmony with the purpose for which the law was passed.

I would therefore say that any person is subject to prosecution under Section 7320, who disposes of personal property under a conditional sale contract by moving it out of the State, without having the written consent of the holder of the conditional sale contract. This consent, if given, may be either a general consent to move the property anywhere, or may be limited to removing it to a particular place.

However, a conveyance on the ground of consent would be limited to the consent as given and not further than that.

Yours very truly,

FRED H. DAVIS,
Attorney General.

COUNTY COURT, INFORMATION—AUTHORITY TO REFUSE
TO FILE IN CASES BOUND OVER FROM COMMITTING
MAGISTRATES

February 28, 1931.

Dear Sir:

In prosecutions in the county court the county prosecuting attorney is presumed to make the same investigation and to dispose of complaints on the same basis as a grand jury would investigate and dispose of same where the case is before the circuit court.

This means that the county prosecuting attorney must investigate the evidence and determine therefrom whether or not he thinks that the facts and circumstances disclosed by the evidence warrant the filing of a formal information against the accused. He has the same right to refuse to file an information in a frivolous case or in a case which should not be prosecuted as would the grand jury under like circumstances.

There is an old legal maxim which says, "de minimis lex non curat." While this is usually applied in civil cases, I see no reason why it does not apply in criminal cases as well. I think the county prosecuting attorney has the right to exercise his discretion and is legally bound to exercise his discretion in refusing to file an information in cases where no *substantial* violation of the law has been committed, or where if a technical violation of the law has been committed the public welfare weighed against the expense which would be caused by prosecuting a case is more to be considered, or where the case is frivolous.

Yours very truly,

FRED H. DAVIS,
Attorney General.

CANDIDATE—LAST DAY TO QUALIFY

February 16, 1932.

Dear Sir:

Replying to your favor of the 9th instant, permit me to say midnight of May 8th is the latest date a candidate can qualify for a state office, and midnight of May 13 is the latest date a candidate can qualify for a county office.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LAKE HATCHNEHA—BOUNDARIES

June 3, 1931.

Dear Sir:

Replying to your favor of the 1st instant, I beg to advise that the portion of the boundary line between Polk and Osceola counties affecting Lake Hatchneha (formerly Lake Cypress) is as follows:

"Thence west to the Kissimmee River; thence up the middle of said river to Lake Kissimmee; thence meandering the southern and western banks of said lake to Lake Cypress, and meandering said Lake Cypress to the township line dividing townships twenty-seven and twenty-eight."

The question as to whether Lake Hatchneha (Lake Cypress) is in Osceola or Polk County probably arises from the fact that what appears on the recent map as Lake Hatchneha was according to the Government survey dated May 21st, 1897, known, named and platted as Lake Cypress. The boundary line in question which is stated above was established by Act of the Legislature prior to 1897 at which time Lake Hatchneha was known as Cypress Lake. It is, therefore, my opinion that Lake Hatchneha which was then formerly platted by the United States Government as Cypress Lake is within and a part of Osceola County.

Respectfully submitted,

CARY D. LANDIS,
Attorney General.

CANDIDATES—DUTY COUNTY COMMISSIONERS TO PLACE
NAMES ON BALLOT

June 15, 1932.

Dear Sir:

Replying to your favor of June 11, in which you state that in your county there is a justice of the peace district having two voting precincts; that there were two candidates for constable in such district; that the county commissioners did not place the name of either candidate on the ballot used in one of the precincts, and that the defeated candidate requests that the county commissioners place the name of both candidates on the ballot for the second primary election, and in which you request my advice in the premises, permit me to say:

It was the duty of the county commissioners to furnish ballots containing the names of both candidates in both precincts. They failed to do so. It seems to me, under your statement of facts, that the candidate receiving the highest number of votes could not claim to be the nominee, because the people of a precinct in the justice of the peace district have, because of the omission by the county commissioners, been denied the right to vote for a constable; therefore, it seems to me, that the only fair thing to do would be for the county commissioners to have the names of both candidates printed on the ballot in the second primary for the two precincts.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CONVICTION FEES—WHEN AUTHORIZED

June 16, 1932.

Dear Sir:

Replying to yours of the 14th instant, in which you ask to be advised whether or not in my opinion a \$5.00 conviction fee for the Prosecuting Attorney should be assessed as costs, and paid to the Prosecuting Attorney, where cases are settled by the defendant paying the costs, permit me to say Section 4 of Chapter 14828, Acts of 1928, reads as follows:

"The compensation of the prosecuting attorney for the county judge's court of Leon County, Florida, shall be Three Hundred Dollars per annum, payable monthly, and in addition thereto said attorney shall receive a fee of \$5.00 for all convictions and pleas of guilty had before said county judge's court, said conviction fees to be taxed as part of the costs in each case. Said conviction fees shall be payable out of the fine and forfeiture fund of the county."

It appears from the provisions of the Section above quoted that the prosecuting attorney should receive \$5.00 for each conviction where the case is tried, and \$5.00 for each conviction where a plea of guilty is en-

tered voluntarily by the accused. In contemplation of law, where a person pleads guilty and the court adjudges the defendant to be guilty, this is a conviction. I assume, of course, that the cases referred to by you as settled by the defendant on the payment of costs, are cases where there is an adjudication of guilt by the Court upon a plea of guilty.

If so, it is my opinion that the Prosecuting Attorney is entitled to his conviction fee. However, if the accused does not plead guilty and is not adjudged to be guilty by the court, or if the accused is not convicted and adjudged to be guilty, it is my opinion that the Prosecuting Attorney is not entitled to a conviction fee.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PURCHASING AGENT

BALLOTS—REFERENDUM CLAUSE SHOULD APPEAR

October 31, 1931.

My Dear Sir:

This refers to your favor of October 23rd, 1931.

You ask the question of whether or not, under Section 6 of Chapter 15149, the referendum should be put on the ballots for the election next year.

In reply would state that the opinion of the Supreme Court seems to throw some possible doubt as to whether Section 6 is a valid section of the act, but with reference to the calling of the election and submitting the matter to the voters, it is my opinion that this should be done, unless in the meantime the Supreme Court should specifically declare this section invalid. In other words, Administrative Officers, in the preparation of ballots and the conduct of the elections, etc., are to treat all laws as valid and binding, unless and until a Court of competent jurisdiction has definitely declared the law ineffective or unconstitutional.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

COUNTY SOLICITORS

COUNTY SOLICITORS—PROFESSIONAL ETHICS GOVERNING

January 1, 1931.

Dear Sir:

This is in answer to your letter of December 16th in which you ask my opinion as to whether or not it would be improper for a County Solicitor of the Criminal Court of Record to accept employment and receive an attorney's fee for rendering services in appearing before the Pardon Board and opposing an application for pardon.

In my opinion the acceptance of such employment would be contrary to good professional ethics. I base this view upon the canon of the American Bar Association code of professional ethics, which holds that it is improper for a public official to directly or indirectly accept any compensation or reward in connection with the performance of any service which would be within his jurisdiction to perform in his official capacity.

The rules of practice and procedure before the Pardon Board contemplate the endorsement of a County Solicitor or State Attorney as being evidence of a very high character in favor of granting a pardon, when the endorsement is favorable, and likewise has very strong evidence against the granting of a pardon when opposed by the County Solicitor or State Attorney of the county where the conviction is had. These rules necessarily include the idea that the State Attorney or County Solicitor shall keep himself in such position that when called upon by higher authority he can give an unbiased endorsement or recommendation for or against pardon applications presented by persons who were convicted in his county, whether under his administration or under a previous administration.

Yours very truly,

FRED H. DAVIS,
Attorney General.

OFFICERS, DELINQUENT—IN RE DUTY OF COMPTROLLER AND
OTHER OFFICERS

June 24, 1931.

Dear Sir:

Section 1345, Compiled General Laws, requires the Comptroller to report to the State Attorney of the proper circuit the name of any delinquent officer whose delinquency concerns the financial department of the Government, and it is thereupon made the duty of the State Attorney to proceed forthwith against such delinquent.

Section 1349 requires the Comptroller and the Judge of the County Court and the Chairman of the Board of County Commissioners to report delinquencies on the part of the tax collectors to the State Attorney of the circuit in which the Collector resides, and it is thereupon made the duty of the State Attorney to institute proper proceedings both civil and criminal as authorized by law.

The grand jury may indict in case of violation of the criminal laws by such delinquents, but all such cases in counties having criminal courts of record must be tried therein upon information filed by the County Solicitor.

In addition to this, it is the duty of the State Attorney to institute civil action against such delinquent for the collection of the delinquencies.

There is no requirement of law that such reports required by either Section be made to the County Solicitor, but this does not preclude the County Solicitor from making investigation of such matters and filing informations, where he thinks the facts justify the same.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INHERITANCE TAX LAW—CONSTRUCTION

June 19, 1931.

Dear Sir:

This refers to your favor of the 17th instant.

I beg to enclose you herewith copy of Senate Bill No. 436, and House Bill No. 294. You will see that the two Acts combined cover all estates subsequent to November 4, 1930. These Acts, therefore, cover the cases of persons dying on or subsequent to November 4, 1930.

Section 2 of the Act sets forth the exemptions of property and in determining when the estate is taxable, these exemptions are computed and deducted from the gross value of the estate and what is left is the amount that is taxable. Unless the estate is of such gross amount as that it will exceed the exemption mentioned in the Act, it is not taxable.

With reference to Section 25 of the Act, I would state that this Section is largely administrative and provides for this information to be conveyed from the various probate officers to the Comptroller's office in order that taxable estates may not escape their just taxes. Small estates below \$2,000.00 are not required to be reported for the reason that these estates clearly would not be taxable.

The forms to be worked out for the administration of the Act will be worked out by the Comptroller and furnished to the various county officials at as early date as practicable.

Very respectfully,

CARY D. LANDIS,
Attorney General.

JUDGE—IN RE DUTY WHEN DISQUALIFIED

July 28, 1931.

Dear Sir:

Replying to your favor of the 25th instant in which you state that you have on the docket of the Criminal Court of Record of your county a case charging a man with embezzlement in the Town of Boynton in your county, and that the Judge of the Criminal Court at the time of the alleged offense represented the Town of Boynton, and by reason of such employment feels that he is disqualified to serve during the trial of the case, on account of which you are doubtful as to whether or not the Judge has the power to set

the trial date for the case or to empanel the jury for the week or day during which the case is to be tried, permit me to say:

It is my opinion that if a Judge is disqualified, he should certify to his own disqualification, and make no further order in the cause except to transfer the cause to some other Judge having jurisdiction. See *Swetson vs. Call*, 13 Fla. 337, 9 So. 246.

Sewell vs. Huffstetler, 83 Fla. 629, 93 So. 162.

Hogan vs. State, 89 Fla. 388, 104 So. 598.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TOWN COUNCIL—IF MEMBER PROHIBITED FROM PURCHASING
SUPPLIES FROM HIMSELF

July 21, 1931.

Dear Sir:

Replying to your letter of the 17th instant, I beg to advise that in my opinion it is very doubtful whether prosecution could be sustained under Section 7472, Compiled General Laws, against a member of the Town Council, for purchasing supplies, goods, or materials from himself for use of such municipality, where such member is the sole owner of business from which same was purchased.

This does not mean that such practice is to be sanctioned, for without the statute on the subject the Supreme Court has said that it is against public policy, and that payment may be enjoined at the suit of taxpayers.

On the other hand, criminal statutes are to be strictly construed, and one cannot be convicted and punished for doing an act that is merely against public policy.

The Section as originally enacted, applied only to State and county boards, and prohibited such boards from purchasing supplies from a member thereof. But when it was amended in 1907 to include any municipality, board, or council, the provision against purchasing from a member of such board or council was eliminated. See Chapter 5186, Acts of 1903, and Chapter 5992, Acts of 1907.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY SUPERINTENDENT OF PUBLIC INSTRUCTION

RUBBER STAMPS—RIGHT OF PUBLIC OFFICER TO USE IN SIGN- ING OFFICIAL DOCUMENTS

January 28, 1931.

Dear Sir:

In the absence of a specific statute definitely requiring an officer to personally sign his name to official papers, it has generally been held that he may sign official documents by means of a rubber stamp or other device adopted and used by him as his signature.

The signing of State warrants required by the Constitution to be signed by the Comptroller and countersigned by the Governor has been accomplished for a number of years by having the signatures of these officials placed on the warrants by means of a rubber stamp. Owing to the fact that thousands of warrants are issued every month it would be impossible for the officers in question to personally sign each warrant.

I am of the opinion that signatures placed on county and school warrants by means of a rubber stamp would be entirely valid for like reasons that such signatures are recognized as valid on State warrants.

Yours very truly,

FRED H. DAVIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT ELECTION—DUTY OF SCHOOL BOARD TO CALL

March 7, 1931.

Dear Sir:

I have just received for answer your letter of March 5th.

There is no doubt about the fact that if no special tax school district election is held, even though the failure to hold it was contrary to law, that the old millage remains in effect and the old trustees remain in office.

However, this does not decide the question as to whether or not it is the duty of the school board to call another election when for any reason the one which has been called fails to result in the election of trustees and the fixing of millage.

As I have pointed out, it is true that the old millage remains in force until new millage is voted. The old trustees remain in office until new trustees are elected, but this does not mean that it thereby ceases to be the duty of the school board to comply with Section 708, which imposed a duty and a continuing duty at that on the county school board to hold proper elections.

Under Section 706 it is provided that special tax school district elections shall be governed, so far as possible, by the general election law. The general election law, Section 254, Compiled General Laws, paragraph 1, provides that special elections shall be held in every case where there has been no choice of any officer who should have been elected at a general election.

Applying this rule to a special tax school district, it is apparent that it is the duty of the county school board to call a special election in every case where the regular election has not resulted in anyone being elected.

Yours very truly,

FRED H. DAVIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT, TRUSTEE—RIGHT TO HOLD
OFFICE TO BE DETERMINED AT TIME POINT OF
DISQUALIFICATION IS RAISED

March 7, 1932.

Dear Sir:

The Supreme Court has held that the right of a man to hold office is determined by his qualification at the time the point is raised, not when he is elected. He may be disqualified when elected and become qualified before he takes office.

Likewise, he may be qualified when elected, but be disqualified from taking office through something that arose after his election.

Therefore, in the absence of some express provision to the contrary in the law, a person who is now in office and who is now qualified is entitled to hold such office, even though he may be disqualified when first elected or when first inducted into the office.

The removal of the disqualification has the effect of disqualifying the officer.

Yours very truly,

FRED H. DAVIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT TAXES—TAX ASSESSOR NOT
ENTITLED TO FEES

HOUSEHOLD—IMMEDIATE—CONSTRUCTION OF

March 20, 1931.

Dear Sir:

Replying to your letter of the 17th instant with relation to the right of the county Tax Assessor to fees for assessing special tax school district taxes, I respectfully refer you to the case of Rawls et al. vs. State ex rel. Nolan, 98 Fla. 103, 122 So. 222, wherein the Supreme Court held that be-

cause the statute does not specifically authorize the payment of fees for such service that the Tax Assessor is not entitled thereto.

Sections 1035 and 1036 authorize the payment of such fees in counties of such population as fixed in said Sections, but neither of these appears to apply to your county.

I have to advise, therefore, that although the statute makes it the duty of the Tax Assessor to assess such taxes, he is not entitled under the law to any compensation therefor.

Further replying to your letter as to the proper construction to be placed on the words "immediate household" as used in Section 1 of Chapter 13881, Acts of 1929, I find that "household" in many instances is used as synonymous with "family," and I think that might be the case as applied to the use thereof in this Section.

It would mean, therefore, the immediate family of the party, which might be construed to mean mother, father, brother, sister, or children of the party claiming sick leave.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SALARIES—LAW COVERING

April 4, 1932.

Dear Sir:

The Legislature of 1931 enacted a law, to-wit: Chapter 15033, which covers the question of salary of Superintendents of Public Instruction of the counties of this State. This Act is as follows:

"An Act relating to the salaries of the County Superintendents of Public Instruction.

"Be It Enacted by the Legislature of the State of Florida.

"Section 1. That the salaries of the Superintendents of Public Instruction of the counties of this State be and the same are hereby ratified and confirmed as heretofore paid.

"Section 2. Except as otherwise provided by law the same salaries paid during the month of January, 1931, and thereafter, shall be continued to be paid to each County Superintendent of Public Instruction in the State of Florida, provided, however, that no salaries of such County Superintendents shall exceed the sum of six thousand dollars per year.

"Section 3. All laws and parts of laws in conflict herewith be and the same are hereby repealed.

"Section 4. This Act shall take effect as of July 1, 1931.

"Approved June 15, 1931."

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICTS—WHO ARE LEGAL VOTERS
AND QUALIFIED ELECTORS—SCHOOL BOARD MAY
PAY FOR TRANSPORTING PUPILS

May 20, 1931.

Dear Sir:

Replying to yours of the 19th instant in which you ask to be advised in writing who are legal voters in special tax school districts when two or more districts are voting to consolidate into one district and to one central school, permit me to say all qualified voters who have paid a tax on personal or real property for the year next preceding the special tax school district election are legally qualified to vote at such election.

Qualified electors, under the statute, are those who have registered and and have paid their poll taxes for the two years preceding the election and who live within the districts in which the election is to be held and who have paid a tax on personal or real property for the year next preceding the special tax school district election.

Replying to your second question, in which you state that your school board has been paying for transportation for pupils from one district to attend a high school in another special tax school district out of the general school fund, permit me to say that we know of no reason why this is not a legitimate expenditure of school funds.

Replying to your third question in which you ask to be advised if the trustees would pay part of the transportation out of one district for pupils attending a high school in another district, permit me to say we do not find a statutory provision prohibiting such expenditure.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SCHOOL TRUSTEE—WHEN TWO CANDIDATES RECEIVE SAME
NUMBER OF VOTES, NEITHER IS ELECTED

May 22, 1931.

Dear Sir:

Replying to yours of the 20th instant with which you enclose the clipping from the Tampa Morning Tribune showing that two candidates for school trustee received the same number of votes, and in which you ask advice relative thereto, permit me to say that Section 709 of the Compiled General Laws empowers the Board of Public Instruction to remove a trustee for failure to discharge the duties of the position, and to fill all vacancies occurring in the Board of Trustees from any cause.

Where two candidates receive the same number of votes in an election, neither candidate is elected. Therefore, the incumbent would be entitled to

the office if the position of school trustee is an office, until his or her successor was elected and qualified, or until such time as the Board might declare a vacancy to exist and appoint a person for the unexpired term.

In view of the provisions of Section 709 above cited, and in view of the fact that school trustees have very limited powers and duties, we can see no reason why there should be any contention over the position.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SCHOOL SURVEY COMMISSION—NOW FUNCTUS OFFICIO

June 2, 1931.

Dear Madam:

I have your favor of the 29th ultimo, in which you ask me to give you my opinion as to whether the School Survey Commission appointed in accordance with Chapter 10115 and 12011, Acts of 1925 and 1927, respectively, is still a functioning body.

In reply to this question I beg to advise you that it is my opinion that this Survey Commission is now functus officio and is no longer an existing functioning body. The laws referred to provided for the appointment of a Commission of five persons with a specific duty, to-wit, the making of an educational survey, and filing on the first Tuesday after the first Monday in April, 1929, their report showing the condition of the educational system of the State of Florida, together with recommendations for the improvement thereof. This report under the law was directed to be transmitted to the Legislature of the State of Florida, all of which was done on the second day of April, 1929. The specific duties of the Commission having been completed as directed by law, thus ended and terminated the duties, powers and authority of this Commission and from that date it was functus officio, that is, the authority having been exercised, the duties directed by law having been fully performed, the law was fully complied with and the legislative direction and authority of this Commission completely terminated.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT ELECTION—CERTAIN DUTIES AND QUALIFICATIONS PREREQUISITE TO VOTE

June 17, 1931.

Dear Sir:

Replying to yours of the 9th instant in which you ask to be advised whether, under the provisions of Section 707 of the Compiled General Laws and laws governing general elections, a person who is registered on general election books and who has paid poll tax for the two preceding years can have a legal right to serve as inspector or clerk in a special tax school district

election when such person has not paid a tax on personal or real property prior to the date of such school district election, permit me to say that such person would not be qualified.

Replying to your second question, in which you ask to be advised whether or not in a school district election where four persons receive the same number of votes for trustee it is the legal duty of the County School Board to call another election, permit me to say that the statute is silent on that question and it is my opinion that the trustees could call another election or the incumbent trustees could continue to hold office until their successors were either elected or appointed.

Replying to your third question, in which you ask whether or not a person who has paid a tax on real or personal property located in a school district other than the one in which the election is to be held would be considered a qualified elector in a special tax school district election, permit me to say under the law such person is not qualified to vote in any district other than the district in which he pays a real or personal tax. If such person pays a tax on an automobile that would be considered the payment of a personal tax.

Replying to your fourth question in which you ask to be advised relative to what is meant by that section of the law which provides for the payment of a tax on real or personal property for the year next preceding a special tax school district election, permit me to say if the election is to be held, for instance, in 1931, a person who had paid his 1930 assessment on real or personal property would be entitled to vote.

Replying to your fifth question in which you ask how many days before the election should the property tax payments be certified by the Tax Collector to the Supervisor of Registration in order that a proper list may be sent with the ballots and other election papers, permit me to say we do not find a statute requiring the Tax Collector to certify the names of those who have paid taxes. The statute requires the Supervisor of Registration to make up a list of those qualified to vote and certify it to the Board of Public Instruction. See Section 706, Compiled General Laws.

Permit me to suggest that if you wish further information on this subject that you take the matter up with your County Attorney, who, I am sure, will be pleased to advise you.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT ELECTION—CERTAIN PERSONS NOT QUALIFIED TO VOTE

June 17, 1931.

Dear Sir:

Replying to yours of the 10th instant in which you ask to be advised whether or not, under Section 706 of the Compiled General Laws, a person who pays a license tax on a boat used for fishing purposes may vote in a

special tax school district election, permit me to say it is my opinion that if this is the only form of tax paid such person would not be qualified to vote, as the license is a privilege tax and is not a tax on real or personal property.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MILLAGE, REDUCTION—PROCEDURE BY SCHOOL BOARD

July 17, 1931.

Dear Sir:

Replying to your favor of the 11th instant, in which you state that you have been advised that I have rendered an opinion recently to the effect that where a reduction in millage is proposed for school purposes, that the reduction should be made in the county's general school levy instead of special tax school districts, permit me to say that no written opinion has been rendered on this subject. Superintendent Cawthon discussed the matter with me several days ago, and I expressed the opinion at that time, and reiterate it now, that if a reduction in millage is contemplated by the school board, that the reduction should be made in the county's general school levy instead of special tax school districts, for the reason that the millage for the special tax school districts has heretofore been levied pursuant to a vote of the people of the district.

Hereafter, when the question is submitted to the people of a school district, and it is the opinion of those concerned that the millage for the district could be reduced and the people of the district vote for a reduction of millage. We know of no statute which would prohibit such action.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SALARIES—CONSTRUCTION OF LAW

July 21, 1931.

Dear Sir:

Replying to your favor of the 19th instant, in which you state your Board desires an opinion regarding the provisions of House Bill No. 1333, Acts of 1931, which provides for the salaries to be paid County Superintendents of Public Instruction for the several counties of the State of Florida, permit me to say the Act under consideration provides that, except as otherwise provided for by law, the same salaries paid during the month of January, 1931, and thereafter, shall be continued to be paid to each county superintendent of public instruction in the State of Florida.

You state that for the month of January, 1931, the County Superintendent of Public Instruction of your county received no salary for that month, and that the question now is what salary should be paid the Superintendent of Public Instruction, pursuant to House Bill No. 1333.

Permit me to say that it is my opinion that the Legislature intended that the same salaries be paid to the County Superintendents of Public Instruction in the several counties of the State that had been fixed prior to January, 1931, and in the amount which the Board had fixed as the salary of the County Superintendent of Public Instruction for the month of January, 1931, and thereafter. If your Board had fixed the salary of the Superintendent for the month of January, 1931, at a certain figure and there was not sufficient funds on hand to pay the Superintendent for the month of January and any month thereafter, it is my opinion that the Superintendent would, nevertheless, be entitled under the provisions of House Bill No. 1333 to the salary which he would have received in the month of January, 1931, and for each month thereafter, if there had been sufficient funds on hand to pay him.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT BONDS—DUTY OF BOARD OF
PUBLIC INSTRUCTION IN RE PAYMENT PRINCIPAL
AND INTEREST

July 25, 1931.

Dear Sir:

In response to your request for an opinion as to whether it is the duty of the Board of Public Instruction to pass a resolution annually, recommending the number of mills for interest and sinking fund on special tax school district bonds, under the provisions of Section 735, Compiled General Laws of Florida, 1927, I beg to advise that the resolution required by said Act is required to be passed by the county school board before such bonds are issued, and is not required to be passed annually thereafter.

In case of *Perry vs. Consolidated Special Tax School District, etc., et al.*, 89 Fla. 271, 103 So. 639, the Supreme Court said that under Section 17, Article XII of the Constitution, as amended in 1924, there is a continuing, mandatory, organic command and duty to levy a sufficient special tax for the payment of the interest on said bonds and the principal thereof, as the same shall become due and payable, without limit as to the amount of such tax levy.

In other words, Section 17 of Article XII of the Constitution, as amended in 1924, supersedes the prior existing statute limiting such levy to five mills.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SALARIES—AMOUNTS TO BE PAID UNDER 1931 LAW

July 29, 1931.

Dear Sir:

Replying to your favor of the 25th instant in which you make inquiry regarding the amount that can be paid to superintendents of public instruction under the provisions of House Bill No. 1333, which took effect July 1, 1931, permit me to say:

The Act of the Legislature which is now the law provides that the salary of the County Superintendent be the amount fixed as for the month of January, 1931, and therefore, it is no longer within the discretion of the Board of Public Instruction to fix the salary of the County Superintendent.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT—CANDIDATE FOR TRUSTEE
MUST BE QUALIFIED ELECTOR

July 31, 1931.

Dear Sir:

Replying to your favor of the 29th instant in which you ask to be advised whether or not a person is qualified to hold the office of trustee in a special tax school district, who failed to pay his poll taxes, permit me to say:

This office has heretofore held and now holds that the same qualifications applicable to an elector in a special tax school district should extend to the right of a trustee's eligibility to office.

Section 706, Compiled General Laws, provides that only qualified electors are eligible to vote in a special tax school district election. To be a qualified elector, one must have paid a tax on real or personal property, must be a resident of the district, and must have paid the poll tax.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT—REDUCTION OF MILLAGE
NOT AUTHORIZED

August 10, 1931.

Dear Sir:

Replying to your favor of recent date, in which you request an opinion on the question of whether or not a lower millage may be levied in a Special Tax School District than the millage voted for by the people, permit me to say that I know of no law which would authorize a reduction of the millage. See Section 708 of the Compiled General Laws.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY BOARDS OF PUBLIC INSTRUCTION—AUTHORIZED
UNDER LAW TO BORROW 80% OF ESTIMATED INCOME

August 13, 1931.

Dear Sir:

Referring to your inquiry of the 10th instant, permit me to say that we have delayed somewhat in replying to same because the Act inquired about does not become effective until September 1st.

You ask to be advised whether or not under the provisions of Senate Bill No. 19-XX County Boards of Public Instruction are authorized to borrow 80% of the total estimated income, irrespective of prior indebtedness, and in reply to your inquiry, permit me to say that under the provisions of the Act the Board is authorized to borrow sums not exceeding 80% of the revenue reasonably expected to be received from the State for the County School Fund, provided, the estimated revenue to be from such sources as have been approved by the State Superintendent of Public Instruction. The Act makes no reference to prior indebtedness, nor does it make any reference to total estimated income. The Act relates solely to the amount of revenue reasonably expected to be received from the State of Florida for the County School Fund.

Yours very truly,

CARY D. LANDIS,

Attorney General.

SALARY—SCHOOL BOARD NOT AUTHORIZED TO REDUCE

August 13, 1931.

Dear Sir:

Replying to your favor of the 10th instant, in which you state that your school board proposes to decrease your salary twenty-five dollars per month, and that you are of the opinion that the school board has no such authority under the Act of the 1931 Legislature, permit me to say that the school board has no authority to reduce your salary below the amount fixed for the month of January, 1931.

Yours very truly,

CARY D. LANDIS,

Attorney General.

SPECIAL TAX SCHOOL DISTRICTS—TRUSTEES NOT AUTHORIZED TO FIX SALARIES OF SCHOOL TEACHERS—
SCHOOL BOARD NOT AUTHORIZED TO
REDUCE MILLAGE

August 19, 1931.

Dear Sir:

Replying to your favors under date of August 14th in which you ask to be advised whether or not the County School Board has the power to reduce Special Tax School District millage, permit me to say that the School Board has no such power.

Relative to the second question presented, in which you state that the trustees of the Special Tax School District have assumed the authority to fix the salaries of school teachers in your county, permit me to say the trustees under the law have no such power. See sub-section 6 of Section 561. Also Section 562, Compiled General Laws of 1927.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX ASSESSORS—WHEN ENTITLED TO ONE AND ONE-HALF
PER CENT COMMISSION

August 19, 1931.

Dear Sir:

This refers to your favor of August 15th, and I beg to enclose you herewith copy of House Bill No. 24-X and Senate Bill No. 921.

It is my opinion that the population basis of each of these Bills applies to your county, and this being true, the Tax Assessor would be entitled to collect one and one-half per cent upon the amount of the district taxes assessed, but the commissions shall be payable only from the special taxes or special tax district taxes collected. Each of these Acts provides that these commissions "are allowed for assessing special taxes and special tax district taxes."

These laws not having been in effect when the last assessment was made, it is my opinion that no commissions would be allowable under the law for the assessments of 1930, but will be allowable and collectible for the year 1931 and subsequent years.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICTS — FREE HOLDERS ONLY
HAVE POWER TO REDUCE MILLAGE

August 26, 1931.

Dear Sir:

Replying to your favor of the 25th instant in which you ask to be advised whether or not if the District School Trustees will show in their estimate of expenditures that ten mills are not required for the schools of their respective districts, and should recommend that the millage be reduced,

would the County Board of Public Instruction then have the right to reduce the millage, permit me to say:

Neither the School Board nor the Trustees have the power to reduce the millage in a Special Tax School District without a vote of the free holders.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICTS—MAJORITY VOTE MUST BE
RECORDED IN BOTH DISTRICTS FOR
CONSOLIDATION

September 3, 1931.

Dear Sir:

Replying to yours of the 2nd instant in which you state that there was an election held in two special tax school districts in your county last Tuesday for the consolidation of the two districts, and that one district gave a majority in favor of consolidation, and the other district a majority against consolidation, and in which you ask to be advised whether or not under the circumstances the consolidation of the two districts was effect, permit me to say:

It is necessary that a majority vote be recorded in both districts for consolidation, otherwise there can be no consolidation of the two special tax school districts.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY BOARDS OF PUBLIC INSTRUCTION—CONSTRUCTION
OF LAW IN RE AUTHORITY TO BORROW 80% OF
EXPECTED REVENUE

September 9, 1931.

Dear Sir:

Your letter of the 2nd instant, addressed to Hon. W. S. Cawthon, State Superintendent of Public Instruction, has been referred to this office for reply.

Replying to your first question in which you wish to be advised whether or not the School Board would have the authority to borrow money under the provisions of Senate Bill 19-XX irrespective of prior indebtedness, permit me to say under the provisions of Senate Bill 19-XX County Boards of Public Instruction are authorized to borrow sums not exceeding 80% of the revenue reasonably expected to be received from the State for the County School Fund, at a rate of interest not exceeding 8%, provided the estimate of all revenue to be received from said source has been approved by the State

Superintendent of Public Instruction. The Act further provides that any moneys borrowed under the provisions of this Act for any fiscal year shall be repaid to the parties from whom borrowed out of the first receipts of such County Board of Public Instruction from such source. The Act further provides that the right and power to borrow money granted under the terms of the Act shall be cumulative to the powers now existing, but that the anticipated receipts from the County School Fund shall not be considered in borrowing money under any other Act.

Replying to your second question, in which you state that you would like to have an opinion regarding the constitutionality and validity of Senate Bill 318, which relates to the teacher unit plan and also as to the constitutionality and validity of the law which allocated the automobile license tag money for school purposes, permit me to say it is my opinion that both Acts are constitutional and valid.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT TAXES—COMMISSIONS FOR ASSESSING AND COLLECTING

October 11, 1932.

Dear Sir:

Replying to your letter of the 7th instant, I beg to advise that the authorized commissions for assessing and collecting special tax school district taxes in Citrus County are payable from the special tax school district taxes so assessed and collected. See Section 1 of Chapter 15044, Laws of Florida, Acts of 1931. Also case of Coppedge et al. vs. State ex rel. Bowden, Tax Collector, 99 Fla. 358, 127 So. 319.

Commissions for assessing and collecting taxes with which to pay interest and principal of bonds issued by a special tax school district cannot legally be paid from current funds of such special tax school district.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MOTHER'S AID—CERTIFICATE TO BE FURNISHED TO COUNTY COMMISSIONERS

October 16, 1931.

Dear Sir:

Replying to your letter of the 7th instant, I beg to call your attention to Section 12 of Chapter 13759, Laws of Florida, 1929, providing that the aid under said Act shall be paid only upon the monthly certificate of the prin-

cipal or head of the school or schools attended by the children of the mother, or of the female relative entitled to the aid under said Act. The certificate referred to should be furnished to the Board of County Commissioners as their authority for paying the aid provided for.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT FUNDS—AMOUNT SET APART
FOR PAYMENT OF TEACHERS' SALARIES NOT
TRANSFERABLE

October 28, 1931.

Dear Sir:

Section 716 of the Compiled General Laws of Florida, 1927, prohibits the use of special tax school district funds set apart by the Board of Trustees for the payment of teachers' salaries for any other purpose. This would prohibit the transfer of such funds for the purpose of paying the interest or principal on bonds of the same district.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SALARY—BOARD COUNTY COMMISSIONERS NOT AUTHORIZED
TO REDUCE.

October 29, 1931.

Dear Sir:

I am in receipt of your letter of the 10th instant, advising that the Board of County Commissioners of your County has reduced your salary and making inquiry as to whether or not they have such power.

In reply I beg to say that I do not know of any such power vested in the County Commissioners. Chapter 15033, Laws of Florida, Acts of 1931, provides as follows: "Except as otherwise provided by law the same salaries paid during the month of January, 1931, and thereafter, shall be continued to be paid to each County Superintendent of Public Instruction in the State of Florida." Chapter 15786, Laws of Florida, Acts of 1931, provides for the County Commissioners to make certain tax levies. You will note that Section 2 provides that there shall be not less than three nor more than 10 mills on the dollar for the General County School Fund. While this last mentioned Chapter limits the County Commissioners with reference to the total school tax levy, it does not authorize them to make any apportionment of the same.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INTEREST—LEGAL RATE

November 25, 1931.

Dear Sir:

Replying to your favor of the 18th instant, in which you state that certain Baker County school bonds have defaulted, and that the bond holders are demanding interest on the same for the period of time they have been past due, and that the Board of Public Instruction of your county desires my opinion regarding the rate of interest that should be paid, permit me to say:

The legal rate of interest in this State is 8% per annum, and a court would probably award that rate if the bond holders were successful in a suit against the Board.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SCHOOL BOARD NOT AUTHORIZED TO LEND SINKING FUND
MONEY

December 9, 1931.

Dear Madam:

Replying to your favor of the 3rd instant, permit me to say the law does not authorize the school board to lend sinking fund moneys of a district to the general school fund. See Section 736, Compiled General Laws, 1927.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INTEREST—BANK SHOULD BE PAID WHEN SIZE OF EACH
ACCOUNT JUSTIFIES

December 29, 1931.

Dear Sir:

This refers to your favor of the 26th instant.

The statutes of the State of Florida do provide that when a fund exceeds \$2,000.00, the bank in which the deposit is secured shall pay interest, and this means that they shall pay interest on the entire amount of the deposit in that particular fund. In other words, if there is deposited in one fund \$2,600.00, the interest shall be computed on the \$2,600.00 and not on the \$600.00, or the excess over the \$2,000.00. It is my opinion that each fund stands on its own bottom, that is, it is a question of accounts, and evidently it was the intention of the Legislature to require interest to be paid where the size of the account was such as that the bank would be justified in paying interest. I do not believe that the law contemplates that you can take the

balances on a number of accounts and if these balances added together exceed \$2,000.00 that you would then be entitled to interest, but it is my opinion that the Legislature intended that the interest calculation should be with reference to each account standing alone.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—SCHOOL BOARD NOT REQUIRED TO
AFFIX TO NOTE

January 11, 1932.

My Dear Sir:

This refers to your favor of January 7, requesting my opinion on several matters, as follows:

1. Whether or not money borrowed by the Levy County School Board from individuals, and the loan being evidenced by a promissory note, then whether or not this note is exempted from the Stamp Tax. It is my opinion that this note is exempted from the Stamp Tax, because it is a governmental or State agency negotiating this note.

2. You ask whether or not these notes are classed as intangibles; and, if so, under what class. It is my opinion that these notes do constitute intangibles, and fall within and are taxable under class C.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

POLITICAL ADVERTISEMENTS AND LITERATURE—CONSTRUCTION OF LAW

March 24, 1932.

Dear Madam:

Replying to your letter of March 14, permit me to say Section 8188 of the Compiled General Laws, 1927, has the following provisions with reference to political advertisements and literature:

"8188. (5924). Political Literature Circulated Prior to Primary Election to Be Signed; Advertisements to Be Marked—All political advertisements and all campaign literature published or circulated prior to or on the day of a primary election shall be signed by the author thereof, and if the same is being published and circulated by a club or committee, then it shall be signed by the chairman and secretary of such club or committee, and such literature which is in circular form shall have upon it the name of the printer or publisher. All political advertisements appearing in a newspaper shall be marked 'Paid Advertisement.' Any person who publishes or circulates any campaign literature or political advertisement without the name of

the author and the name of the printer or publisher thereon, as required by this Section, shall, upon conviction, be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment."

We find nothing in the Section requiring the name of the printer to be imprinted upon any political literature other than for which is in circular form; therefore, the name of the printer would not be required on a candidate's card.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SCHOOL TEACHERS—UNDER RULES STATE BOARD OF HEALTH,
HEALTH CERTIFICATE SHOULD BE FILED

April 1, 1932.

Dear Sir:

This refers to your favor of March 31st relative to a school teacher who has taught in your schools, and who has not filed a health certificate.

I find no statute requiring such certificate, but Chapter 1, Title 11, Compiled General Laws of Florida, seems to vest in the State Board of Health the right to make and promulgate rules pertaining to health, which rules have the force and effect of law so long as they are reasonable and within the power given to the State Board of Health. Under this power and authority so given, I understand the State Board of Health has promulgated a rule as follows:

"All teachers or instructors in any public school operating in the State of Florida or in any private school operating within the State of Florida shall be required to file with the Board of Health of Florida annually before the beginning of each school year a certificate obtained from a reputable physician who is licensed to practice medicine in the State of Florida, certifying that said teacher or instructor has been duly and carefully examined and is free from communicable diseases and is believed to be a non-carrier thereof."

You will see that this rule of the State Board of Health requires annually the filing of such health certificate, and if the teacher you have in mind has done this, I think the law has been fully complied with. If he has not done so, it would be a continuing duty upon him to do so, and I would suggest that he have an examination made and file the certificate at this time.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY SCHOOL FUNDS—CAN BE USED ONLY FOR MAINTENANCE OF PUBLIC FREE SCHOOLS

April 9, 1932.

Dear Sir:

Replying to your letter of the 7th instant, I beg to advise that the funds appropriated by the State to the county school fund can be used only for the maintenance of the public free schools of the county. This includes teachers' salaries, transportation of pupils, and other incidental and necessary current expenses in the operation of the schools, and nothing more.

Yours very truly,

CARY D. LANDIS,
Attorney General.COUNTY SCHOOL BOARD—MUST ACT IN GOOD FAITH WHEN
REJECTING NOMINATIONS OF TEACHERS
MADE BY TRUSTEES

April 28, 1932.

Dear Sir:

This refers to your favor of April 26, in which you make inquiry as to whether or not the Board of Public Instruction may reject the nomination made by the trustees, for only the reason that they deem it for the best interest of the school to do so. The statute relative to this reads as follows:

"The County Board of Public Instruction shall have the right to reject any teacher nominated, and in case the second nomination of a teacher be not ratified, the said Board shall then proceed on its own motion to fill vacancies in the teaching force of the said tax school district."

It is my opinion that the county school board in rejecting nominations must act in good faith, and when they have done this the law does not seem to require them to give any reason for their action.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.SCHOOL BOARD—AUTHORIZED TO REMOVE TRUSTEE FOR
NEGLECT OF DUTY

April 29, 1932.

Dear Sir:

Replying to your favor of April 25th, permit me to say, the question of whether a man holding an elective office is eligible to hold that office can only be tested in a court of competent jurisdiction.

Section 709, Compiled General Laws, provides that the School Board may remove a trustee of a special tax school district if the trustee fails to perform his duties. This seems to be the only ground for removal of a trustee by a school board.

Very truly yours,

CARY D. LANDIS,
Attorney General.

SALARY—LAW DOES NOT PROHIBIT DECREASE, THOUGH COR-
RUPT PRACTICE ACT WOULD BE CONSTRUED
AS VIOLATED IN CERTAIN CASES

May 13, 1932.

Dear Sir:

Replying to your favor of the 10th instant, in which you ask to be advised whether or not it would be illegal for the Superintendent of Public Instruction, with the approval of the Board, to accept a salary less than the amount provided for by statute, permit me to say I know of no legal objection to this being done. However, the Superintendent is entitled to the salary fixed by law, and it would be a violation of the corrupt practice act for a candidate for office to publicly state or promise that he would, if elected, accept compensation in an amount less than that fixed by law, as this would be construed to be either a direct or an indirect promise to the voters to give back to them moneys to which the officeholder is legally entitled.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICTS—LAST MILLAGE VOTED TO
BE LEVIED STILL IN EFFECT

June 28, 1932.

Dear Sir:

Referring to your letter of the 16th instant, Section 601 of the Compiled General Laws requires that the millage for special tax school districts be fixed by majority of the ballots cast by electors at the biennial election for that purpose. From your letter it appears that no particular millage received a majority of the votes cast by the electors of District No. 2 of Seminole County at the election held on the 15th instant. Therefore, there was no determination by the electors at said election as to the millage to be levied for said district for the next ensuing two years.

Section 708 of the Compiled General Laws provides that if for any unavoidable cause the biennial election shall not be held at any special tax school district, then the millage which was last voted for in and by such special tax school district shall remain and be in effect. To all intents and

purposes, so far as the determination of the millage to be fixed was concerned, there was no election, and the last millage theretofore voted should be continued until the matter is determined by the next regular biennial election for that purpose.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT BONDS—WHEN BOARD
AUTHORIZED TO INVEST SINKING FUNDS

June 28, 1932.

Dear Sir:

I am in receipt of your letter of the 20th instant making inquiry whether it would be legal for the Board of Public Instruction of your county to buy Special Tax School District Bonds.

In reply I would state that Section 9 of Article XII of the State Constitution provides that school funds shall be disbursed for the support and maintenance of the public free schools and I do not think the Board of Public Instruction would be authorized to invest the school funds intended for the entire county in bonds of a Special Tax School District. Under the provisions of Section 736 you will find that the Board of Public Instruction is authorized to invest Sinking Funds for the retirement of any bond of a Special Tax School District in the bonds of another Special Tax School District under certain conditions.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SCHOOL CHILDREN—IN RE CONTRACTS FOR
TRANSPORTATION

June 28, 1932.

Dear Sir:

I am in receipt of your letter of the 21st instant, making inquiry whether the Board of Public Instruction may let contracts to bus drivers for the transportation of school children without advertising the same.

In reply I beg to say that I find no statute definitely requiring such advertisement but, in my opinion, it would be contrary to public policy to let such contracts without due notice to the public of the same. You further make inquiry as to whether such contracts may be entered into for more than one year. In reply to this question, I beg to say that I do not find any

statute that would prohibit contracts of this nature for more than one year, but there may be some question as to the public policy of one board letting contracts for a period of more than one year, when such contracts will extend into the administration of a succeeding board.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY SCHOOL FUND—ONLY COUNTY SCHOOL OFFICERS
CAN BE PAID FROM

December 23, 1932.

Dear Sir:

This refers to your letter of December 20.

Section 15 of Article XII of the Constitution of Florida provides for the payment of county school officers from the county school fund of their respective counties and for the payment of other county officers from the general funds of their respective counties. The compensation of other county officers in this Section is referred to as salaries, but in view of the first provision of said Section, it is my opinion that only county school officers can be paid from the county school fund.

Very truly yours,

CARY D. LANDIS,
Attorney General.

COUNTY SURVEYOR

LAND—METHOD OF DIVIDING EXCESS SECTIONS

April 14, 1932.

Dear Sir:

I am in receipt of your letter of the 11th ultimo, with reference to land boundaries. You make inquiry as to the proper method of dividing excess sections of land, and specifically inquire whether a fraction of such sections named in the deeds as quarter sections or half sections should include a quarter or a half of the total area, or whether all the excess should be included only in the upper half of the section or upper quarters thereof.

In 4 Ruling Case Law 114, boundaries 52, it is stated that one of the above mentioned methods is used in some jurisdictions, and the other is used in other jurisdictions. I have searched the reports of the Florida Supreme Court, and it does not appear that this question has yet been passed upon. In this situation I am inclined to think that only a court decision could determine the matter.

In this connection your attention is called to the fact that our court has determined that original monuments control where there are such monuments.

Yours very truly,

CARY D. LANDIS,
Attorney General.

JUSTICES OF THE PEACE

MOTOR VEHICLES — DEALERS HAVE NO RIGHT TO OPERATE ON PUBLIC HIGHWAYS WITHOUT TAG

January 15, 1931.

Dear Sir:

This is in answer to your letter of January 13th on the above subject.

The law requires that every automobile operated over the public highways of the State of Florida shall have affixed thereto a distinctive number and tag issued by the State authorities (Section 1291, Compiled General Laws).

No exception is made to permit an automobile dealer to operate a new automobile on the public highways without either a dealer's tag, temporary tag, or a tag for the particular car being operated, that is, without any tag at all.

On the contrary, the purpose of having dealers' tags issued is to take care of situations like this, in order that every automobile operated on the highways, whether by dealers or otherwise, shall have affixed thereto at the time of operation, a distinctive tag either in the form of a dealer's tag, temporary tag, or regular tag covering such operation.

It may be emphatically stated that dealers have no more right to operate an automobile without a tag of some kind than anybody else. In fact, all cars in transit using the highways should have tags thereon, unless such cars in transit are being hauled rather than operated. The penalty for violating this law is that prescribed by Section 7792, Compiled General Laws, which is a fine not exceeding \$100 or imprisonment not exceeding three months or both.

Yours very truly,

FRED H. DAVIS,
Attorney General.

JURISDICTION—CONSTRUCTION OF LAW

January 28, 1931.

Dear Sir:

Section 8433, Compiled General Laws, provides that a Justice of the Peace may issue a warrant upon complaint that any offense which he has jurisdiction to try and determine has been committed "within his district."

The language used in this Section, "within his district," would preclude a Justice of the Peace from issuing a warrant for the arrest of an offender

where the offense has been committed in a justice district other than his own, even when the Justice of the Peace of the district within which the offense has been committed is temporarily or permanently absent from his district, or is for any other reason unavailable to act.

Section 8319, Compiled General Laws, also refers to offenses for which a Justice of the Peace may issue a warrant by limiting his right to issue warrants for "any offense committed against the laws of the State within his district."

Yours very truly,

FRED H. DAVIS,
Attorney General.

PROCEDURE WHEN DISQUALIFIED

February 4, 1931.

Dear Sir:

When a justice of the peace is disqualified he should immediately refer the case to be tried by the county judge or by the justice of the peace of some other district in the county. In order to accomplish this he should make out an order reciting that he is disqualified, and in such order should direct that the case with all the papers thereof be transferred either to the county judge or some other justice of the peace for trial, and should thereupon send the papers with his order and under his hand and seal to the judge under whose jurisdiction the case has been transferred.

It is the duty of the judge entering an order of disqualification to attend to this without any request from any other authority.

Yours very truly,

FRED H. DAVIS,
Attorney General.

AMUSEMENT PARKS—LICENSE TAXES UNDER SECTION 1080, EXEMPTION UNDER SECTION 1268

February 19, 1931.

Dear Sir:

This is in reference to your letter of February 16th on the above subject.

I am frank to state that I do not believe that the exemption to confirmed cripples or invalids which is granted by Section 1268 on the subject of peddling without license can legally be extended to include a business such as that for which a license is required under Section 1080, Compiled General Laws.

From what you state concerning the business actually being done by

the man mentioned in your letter of February 16th, I do not believe that he would be liable to an amusement park license if his principal business is that of running a food and drink stand to which the dancing and the like is merely incidental. Section 1080 is primarily designed to cover merry-go-rounds, tent shows and the like. Where the principal business done is that of an eating house and cold drink stand, and a dancing pavilion is maintained purely as an incident to the operation of the food and drink stand, the proper license is a food and drink stand license and not an amusement park license.

Yours very truly,

FRED H. DAVIS,
Attorney General.

COSTS—COMMITTING MAGISTRATE ENTITLED TO

February 28, 1931.

Dear Sir:

The law provides that a committing magistrate in the absence of an insolvency affidavit shall require security for costs in all cases where the offense is not necessarily one of a general public nature. Such a case appears to be shown by the facts stated in your letter of February 24th.

Under the circumstances, where a prosecuting witness gives security for costs in order to procure the issuance of a warrant and an examination of the accused, and it is found that the accused shall not be held for further proceedings, the dismissal of the prosecution by the committing magistrate operates as a breach of the bond and liability for the costs is a charge against the bond and the sureties thereon.

The proper procedure in a case of this kind contemplates that the justice of the peace and the constable shall present their cost bills to the County Commissioners for audit and payment out of the fine and forfeiture fund. The county is at liberty to reimburse itself for such costs out of the bond which was taken by the committing magistrate as security for such costs.

When former Attorney General Thomas F. West was in office he rendered an opinion to the effect that while the law provided that a committing magistrate such as a justice of the peace was not entitled to any costs in the event he held a preliminary hearing and bound over a man to the higher courts, and such defendant had no information filed against him, nor indictment found, that there was no statute which prohibited the officers from collecting their fees where the man was arrested and discharged on preliminary hearing, except of course those cases which might be called frivolous, where no bond or security for costs was taken.

In short, the purpose of the law was to compel justices of the peace and county judges to release prisoners where the evidence did not warrant binding them over and thereby save costs for the county by not having prisoners held in jail at public expense awaiting trial upon weak charges.

When a case is dismissed by the committing magistrate, it is at an end, and the committing magistrate is entitled to his costs. As I have stated above, the rule to this effect was pronounced by former Attorney General West, and has been followed ever since.

Yours very truly,

FRED H. DAVIS,
Attorney General.

WARRANTS, CRIMINAL—STATUTE PROVIDES SHALL BE
ISSUED IN DUPLICATE

February 28, 1931.

Dear Sir:

Section 20 of Chapter 9321, Acts of 1923, Laws of Florida, provides that from and after the first day of July, 1923, *all* warrants for the arrest of any person charged with a violation of law shall be issued in duplicate and a copy served upon the accused at the time of his arrest.

This statute, while inserted in a general law whose title is confined entirely to search warrants, is nevertheless in terms of general application and applies to all warrants which are issued for the arrest of a person on any criminal charge, regardless of its nature.

The section is probably unconstitutional because it is not germane to the subject expressed in the title to the law. At the same time, a ministerial officer or a judicial officer acting in a judicial capacity in the issuance of process has no right to disregard a statute found on the statute books of the State, but must follow it until it is declared unconstitutional by some legal decision rendered by a court of competent jurisdiction, the presumption being that the law is constitutional until declared otherwise.

Therefore, until some Court decision declares Section 8325, Compiled General Laws, unconstitutional, because the subject thereof is not covered by the title of the act, it should be considered to be a law of the State of Florida, and followed by all justices of the peace and county judges when issuing process.

The language of the law is clear and it is by no means confined to search warrants.

Yours very truly,

FRED H. DAVIS,
Attorney General.

JURISDICTION—IN RE CERTAIN CASES AND COUNTIES

August 26, 1931.

Dear Judge:

Replying to your favor of the 24th instant, in which you ask to be advised regarding the jurisdiction of the justice of the peace relative to prosecution for the disposal or removal of personal property under lien as provided in Section 7316, Compiled General Laws of 1927, and in which

you ask to be advised whether or not the court of justice of the peace has jurisdiction to try a person charged with being drunk, permit me to say:

The court of justice of the peace has no jurisdiction to try either of the two charges named.

Section 8289, Compiled General Laws, provides that in counties where there are no county courts or criminal courts of record, justices of the peace shall have power to hold a court to try and determine all misdemeanors committed in their respective districts punishable by fine not exceeding \$500.00 or by imprisonment not exceeding six months.

Section 8290 provides that in counties where there are county courts justices of the peace shall have power to hold a court to try and determine all misdemeanors committed in their respective districts punishable by fine not exceeding \$100.00 or by imprisonment not exceeding three months or by both such fine and imprisonment.

Section 8292 provides that in case a justice of the peace be disqualified or unable for any cause to try a criminal case the same may be tried before any other justice of the peace of the county or before the county judge.

Section 7316, Compiled General Laws, makes it a crime to dispose of or remove personal property under lien, contract or conditional sale, and executing mortgage without notifying prior mortgagee, and the penalty for a violation of this section is a fine not exceeding \$500.00 or imprisonment not exceeding one year.

Inasmuch as the penalty for a violation of Section 7316 is greater than that which may be imposed by a justice of the peace a justice court therefore has no jurisdiction to try a person charged with a violation of the statute.

You ask to be advised whether or not a justice of the peace has jurisdiction to try a person charged with being drunk. Permit me to say a justice of the peace has not jurisdiction because Section 7631, Compiled General Laws, gives the county judge's court exclusive jurisdiction to try a person charged under Section 7616, which provides that it shall be unlawful for any person to become or be drunk or intoxicated.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CONSTABLE—NOT AUTHORIZED TO ACT AS COLLECTION
AGENCY

August 27, 1931.

Dear Madam:

Replying to your favor of the 24th instant, in which you state that the Constable of the district of which you are Justice of the Peace is accepting for collection in his capacity as Constable of the district various items

such as dishonored checks and is repossessing personal property alleged to have been fraudulently obtained, and that you do not think he has authority to act in such capacity, permit me to say:

The office of the Justice of the Peace should not be turned into a collection agency, and if your Constable is attempting to do so permit me to suggest that you take the matter up with the County Solicitor of Polk County, who will no doubt be glad to advise you regarding the proper steps to take.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES—CIVIL CASES

September 10, 1931.

Dear Sir:

Replying to your favor of the 3rd instant, in which you request a compilation showing just what fees are permitted to be charged by a justice of the peace in civil actions permit me to say I am enclosing herewith a compilation of the fees which a justice of the peace may legally charge.

The Supreme Court, in the case of *State ex rel Murphy vs. Harlee*, opinion filed December 20, 1930, said that the provision of Section 3384, Revised General Statutes 1920, providing that the fees of a justice of the peace shall be the same as those of the Clerk of the Circuit Court for similar services, has reference to the fees of the Clerk of the Circuit Court that are prescribed by Section 3084, Revised General Statutes 1920, and not to the fees prescribed for the Clerk of the Circuit Court by subsequent statutes, which means that any statute enacted since 1920, increasing the fees of the Clerks of the Circuit Courts will not be applicable to the fees allowed to justices of the peace for like services.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—WHEN REQUIRED ON NOTE OR MORTGAGE

September 24, 1931.

Dear Sir:

A Documentary stamp is not required on both the note and the mortgage, but is required on the note where the note is secured by the mortgage. If a loan is made and a mortgage given without a note, then the stamp must be attached to the mortgage.

Yours very truly,

CARY D. LANDIS,
Attorney General.

JUVENILE CASES—WHEN JUSTICE OF THE PEACE HAS
JURISDICTION

October 6, 1931.

Dear Sir:

Replying to your favor of the 26th ultimo, in which you ask to be advised whether or not you as a justice of the peace could dispose of juvenile delinquents as the county judge has done heretofore, permit me to say:

A justice of the peace after trial and conviction is authorized under the law to sentence a person under the age of eighteen to one of the industrial schools. But until trial and conviction upon a criminal charge, the justice of the peace has no jurisdiction over juvenile cases.

Yours very truly,

CARY D. LANDIS,
Attorney General.

POLL TAXES—MUNICIPAL ELECTION

October 22, 1931.

Dear Sir:

The general law requires the payment of poll tax on or before the second Saturday previous to the month in which the election is to be held.

It might be possible that your local city charter or ordinances, control this situation, and, of course, I have no access to these.

Yours very truly,

CARY D. LANDIS,
Attorney General.

JUVENILE CASES—IN RE JURISDICTION

November 4, 1931.

Dear Sir:

Replying to your favor of the 30th ult., in which you state that you are unable to reconcile my letter of October 6th with Section 3705 of the Compiled General Laws of 1927, and ask to be advised further, permit me to say:

The statutes give the county judge jurisdiction over dependent and delinquent children. If you will read Section 3684, Compiled General Laws, you will find that "dependent" and "delinquent" child is defined.

Section 3705 pertains to a child charged with a crime, and the statute provides that the justice of the peace in his discretion may take charge of the custody of a child charged with crime, in the same manner as provided for the county judge to take charge of delinquent children, and the statute provides further that the justice of the peace may make and enter an order

remanding the custody of a child charged with crime to the probation officer to be dealt with as delinquent children.

The statute further provides that if, after the justice of the peace has dealt with a child charged with crime, as if it were a dependent or delinquent child, and the order of the justice of the peace directing the care and control of the child is made after trial and conviction but before sentence, such child is found to be incorrigible or dangerous to the welfare of the community, the justice of the peace may order the arrest of such child and sentence him as if the sentence had not been suspended.

If this does not make your jurisdiction over children clear to you, permit me to suggest that you take the matter up with your County Attorney, who, no doubt, will be able to explain the same more thoroughly than we can do by correspondence.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COURT DOCKET—NO AUTHORITY FOR REMOVING OUT OF COURT'S JURISDICTION

November 7, 1931.

Dear Sir:

Replying to your favor of the 5th instant, in which you ask to be advised whether or not the State Auditor or any one else has the authority to take your Court Docket away from your office and out of your jurisdiction, and keep it for any period of time, permit me to say that it is my opinion no one would have the authority to take possession of your Court Docket and take it out of the jurisdiction of your Court without your consent, unless a Superior Court order had been obtained.

Yours very truly,

CARY D. LANDIS,
Attorney General.

JURISDICTION—APPLICATION OF STATUTE

November 23, 1931.

Dear Sir:

Replying to your favor of the 19th instant, permit me to refer you to Sections 8289 and 8290, Compiled General Laws of 1927, which prescribe the jurisdiction of a justice of the peace in counties where there are no county courts or criminal courts; also the jurisdiction of the justice of the peace in counties where there are county courts.

Yours very truly,

CARY D. LANDIS,
Attorney General.

JUDGMENTS—COURTS HAVE AUTHORITY TO CHANGE OR
REDUCE

April 1, 1932.

Dear Sir:

I have your letters of the 15th and 29th ultimo, with reference to change of sentence in a criminal case after commitment.

In reply to your inquiry, I beg to refer you to the case of Lake vs. State, 100 Fla. 373, 129, So. 827, the second headnote of which reads as follows:

"In the absence of statutory or constitutional provision controlling, prior to the adjournment of the term or other time fixed in which the cause passes beyond the jurisdiction of the record and becomes final, any court of record has full control over its judgments or decrees and can set them aside or reform them as it may deem right and legal. The rule applies to civil and criminal cases alike and may be effected on the Court's own motion or on being advised by any party in interest."

I do not know of any constitutional or statutory provision contrary to the above holding, and it is my opinion that you have authority to change or reduce the sentence of the prisoner mentioned, or to discharge him if done during the same term of court in which he was originally sentenced.

Yours very truly,

CARY D. LANDIS,
Attorney General.

APPEALS, CRIMINAL CASES—CONSTRUCTION OF STATUTE

April 22, 1932.

Dear Sir:

A defendant charged with a criminal offense in justice of the peace court does not lose his right to an appeal where he pleads guilty, nor does he lose his right to an appeal by allowing three days to elapse without giving notice of appeal.

There are two statutory provisions for appeal. One is found in Section 4645, Compiled General Laws of Florida, 1927, in which case the appeal is taken by entering written notice of appeal and filing same with the Clerk or Judge, if there be no clerk, and serving a copy on the State Attorney. Appeals under this statute must be sued out within three months from the date of rendition of the judgment appealed from.

The other procedure is found in Section 8471 to 8474, Compiled General Laws of Florida, 1927, under which the appeal must be taken within thirty days from the date of the judgment or sentence appealed from.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LAWS, VARIOUS—CONSTRUCTION OF

June 21, 1932.

Dear Sir:

Replying to yours of the 17th instant, permit me to say the law imposes such duties upon the Attorney General that it is impossible for him to advise all of the county officers, including justices of the peace, regarding their duties and powers under the law. However, I will in your case make an exception, and endeavor to advise you on the questions propounded in your letter.

Section 7640, Compiled General Laws, does not contemplate the issuance of a search warrant, upon complaint of anyone other than the officers named in said section. However, a justice of the peace may issue a search warrant under the provisions of Section 8506, 8508 and 8518 of the Compiled General Laws.

With reference to your second question, the Supreme Court did hold the compulsory school attendance statute of 1923 to be invalid, and I know of no prosecutions being attempted at this time under the provisions of said statute.

Replying to your third question, permit me to say the Statute of Limitations applicable to criminal prosecutions does not appear to apply to proceedings in bastard cases. Bastardy proceedings are quasi-criminal, insofar as the complaint before the committing magistrate is concerned, but when the case goes before the Circuit Court it is a civil proceeding. See Section 5876, Compiled General Laws. Also *Thomas vs. State*, 20 So. 529, *State vs. Roe*, 99 Fla. 972, 128 So. 7.

With reference to your fourth question, it is not the policy of this office to answer hypothetical questions. However, I will say it is my opinion that where a person is charged with compounding a felony by agreeing for a consideration to prevent prosecution, and that the person charged with the commission of the felony is subsequently tried and acquitted, no prosecution of the person charged with compounding the felony could be successfully maintained.

Replying to your fifth question, permit me to say the statutes do not define an offense known as compounding a misdemeanor. However, Section 7540, Compiled General Laws, provides as follows:

"Whoever having knowledge of the commission of an offense punishable by death or by imprisonment in the State Prison, takes money or a gratuity or award or an engagement therefor upon an agreement or understanding, expressed or implied, to compound or conceal such offense, or not to prosecute therefor, or not to give evidence thereof, shall when such offense of which he has knowledge is punishable with death or imprisonment in the State Prison for life, be punished by imprisonment in the State Prison not exceeding five years, or in the County Jail not exceeding one year; and where the offense of which he so had knowledge was punishable

in any other manner, he shall be punished by imprisonment in the County Jail not exceeding one year or by fine not exceeding \$500."

In view of the language of the section above quoted reading as follows, to-wit: "and where the offense of which he so had knowledge was punishable in any other manner, he shall be punished by imprisonment in the County Jail not exceeding one year, or by fine not exceeding \$500 . . .," it appears that a person might be guilty of compounding a misdemeanor.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WORTHLESS CHECK—PAYMENT OF DOES NOT RELEASE
MAKER FROM CRIMINAL PROSECUTION

June 22, 1932.

Dear Sir:

This refers to your favor of the 21st instant, in which you state that you issued a warrant for a man for issuing a worthless check, and he wishes to pay the check, and you ask whether or not you are within your rights in accepting payment of the check and cost of warrant.

The fact that a man is arrested for issuing a worthless check is no reason why he should not pay the check, if and when he can. When in the regular and proper course of your duty as justice of the peace you issue a warrant, you are entitled to accept the costs properly accrued in your Court. The fact of the payment of the check, however, is not a settlement of the criminal charge and has nothing to do with it, except insofar as it might appeal to you as the Court or to a jury in a lesser punishment. In other words, your Court and no other Court should use the process of the law for the purpose of a collection agency. When you issue a warrant in cases of this character, the matter should be pursued to a final conclusion from a criminal standpoint, regardless of the fact that the man may pay the check which is the basis of the prosecution. Payment of the check only goes to the mitigation of the punishment.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEE OFFICE—CERTAIN EXPENSE NOT ALLOWED

July 21, 1932.

Dear Sir:

Replying to yours of the 17th instant, permit me to say the office of the justice of the peace is a fee office. A justice of the peace receives no allowance for rent, lights, and office expenses from the State. He pays this expense from the fees received from his office.

The amount of legal cost in a minor case, when it is compromised in a justice of the peace office, would depend in each case upon the service rendered by and through the office of the justice of the peace. I would suggest that on this and similar questions you might consult the County Attorney of Monroe County.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PROBATION OFFICER

INDIGENT CHILDREN—BOARD OF COUNTY COMMISSIONERS AUTHORIZED TO PAY NECESSARY EXPENSES FOR CARE OF

February 25, 1932.

Dear Madam:

With reference to your question as to whether or not the Board of County Commissioners of Wakulla County would have the power and authority to pay the actual necessary expenses for conveying a poor and indigent child to Chattahoochee for the purpose of medical examination and treatment, I beg to advise that under Section 2163 of the Compiled General Laws, 1927, it is provided that the County Commissioners shall "have care and provide for the poor and indigent people of the county."

Thus it is that it is my opinion that the County Commissioners of Wakulla County would have the right and power, and it would be their duty to do those reasonable things that would be necessary to care for the poor and indigent of the county; and, if in doing this, it would be necessary in the judgment of the County Commissioners that a poor and indigent boy be carried to Chattahoochee for medical care and treatment, then such necessary expense would be reasonably charged against the county, and should be authorized to be paid by the Board of County Commissioners.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SHERIFFS

CORONER'S INQUEST—FEES FOR ATTENDING

January 8, 1931.

Dear Sheriff:

This will acknowledge receipt of your letter of January 5th enclosing statement of fees proposed to be charged for attending a Coroner's inquest, and asking my opinion as to whether said fees are correct.

The fees for Sheriffs in matters of this kind are those prescribed by Section 4588, Compiled General Laws. For attending a Coroner's inquest the

prescribed fee is \$5.00 for each inquest, together with mileage per mile each way at the rate of 12½c per mile. Therefore, these items as contained in your bill are correct.

The Sheriff is also allowed 20c each for summoning the Coroner's jury. The item for calling the jury is not allowable in the case of a Coroner's inquest, because calling of the jury is not necessary nor provided for by law. Therefore, this item should be eliminated.

The item of \$4.00 per diem for attending the Court should also be eliminated, because under the law in the case of a Coroner's inquest, the \$5.00 fee is supposed to cover all the attendance that the Sheriff may make in connection with the Coroner's inquest, whether on one day or several days. In short, he is allowed a \$5.00 fee for attending the Coroner's inquest, whether it takes a minute, hour, day, week, or month. The \$4.00 per day allowed by statute is for attending court sessions. A Coroner's inquest is not regarded in the law as being a court session.

I would like to call your attention to the fact that there is a distinction also between a Coroner's inquest and a preliminary hearing which is had by the justices of the peace or county judge, in the event that some person is charged with a homicide in the verdict of the Coroner's jury.

Insofar as the hearing develops into a preliminary hearing before the judge as a committing magistrate, then the officer is entitled to his regular \$4.00 per day for attending court, as such preliminary hearing is not a part of the Coroner's inquest.

It therefore appears that you are entitled to the following items:

52 miles to dead body at 12½c.....	\$6.50
52 miles back to office, same rate.....	6.50
Attending Coroner's inquest	5.00
Summoning six jurors, at 20c each.....	1.20
8 miles traveled to summon jurors at 12½c per mile.....	1.00
Return on jury venire	.25

This eliminates the per diem for attending court and the fees you have charged for calling the jury.

Yours very truly,

FRED H. DAVIS,
Attorney General.

COUNTY CONVICTS—FUND FROM WHICH DISCHARGE FEE SHOULD BE PAID

February 4, 1931.

Dear Sir:

Section 8549, Compiled General Laws, provides that when a prisoner is discharged from the county convict camp he shall be furnished transportation or its equivalent in money back to the place from which he was sentenced, together with the sum of \$5.00, where the sentence is fourteen months or

more, and the sum of \$3.00, where the sentence is for a less period than three months, in addition to his transportation, all of which, "shall be paid out of the general fund of the county" in which he was convicted.

The statute also provides that the Clerk of the Board of County Commissioners shall draw a warrant on the general fund for the payment of the required amounts.

I therefore answer your letter of February 2nd by stating that it is my opinion based on the language of the statute that the discharge fee for a county convict is payable only out of the general county fund of the county.

Yours very truly,

FRED H. DAVIS,
Attorney General.

GAME LAWS—DEFINITION OF NON-RESIDENT FOR PURPOSE OF LICENSE

February 5, 1931.

Dear Sheriff:

This is in answer to your letter of February 3rd on the above subject.

Section 1 of Chapter 13644 defines who shall be deemed to be a "resident" within the meaning of the game law. This definition is as follows:

"All citizens of the United States who have lived in Florida for at least six months immediately preceding the making of application for license as required by this act, shall be, deemed residents of Florida."

The above definition should be applied by the authorities in issuing licenses under the game law.

Insofar as sending back to other states for automobile licenses is concerned, it occurs to me that the person must either elect to be a resident or a non-resident. He cannot be both at the same time. That is, he cannot be a non-resident for the purpose of operating his car without a Florida tag, and a resident for the purpose of getting a fishing license cheaper than he would ordinarily have to pay.

Yours very truly,

FRED H. DAVIS,
Attorney General.

ELECTROCUTION—FEES ALLOWED SHERIFFS

March 7, 1931.

Dear Sheriff:

This is in answer to your letter of March 3rd on the above subject.

In my opinion the proper scale of fees to be paid to the Sheriff for electrocuting a prisoner condemned to death is as follows:

Mileage at regular rates for conveying prisoner under death warrant.

Mileage at regular rates for personally going on second trip to attend execution.

For performing execution, \$10.00. (This is the fee sheriff formerly received for hanging a prisoner, and I do not think it can be said to have been the legislative intent in providing for electrocution to have abolished this fee for executing the death sentence).

In the event that it is necessary for the Sheriff to take guards with him to prevent the escape of the prisoner en route to the State Prison, he is entitled to guard hire at the same rate and under the same circumstances that he is allowed for guard hire in other cases, where he is required to have assistance in order to transport a prisoner.

When a Sheriff receives a death warrant it contains a command to convey the prisoner to the State Prison by a certain time. It also contains a command to the Sheriff to be present at the prison and assist in the execution.

Therefore, whatever the Sheriff does in response to the writ is an execution of the writ, and whatever mileage he travels to execute the writ is entitled to be paid to him, the same as if he traveled the same mileage in executing a warrant of arrest or some other warrant.

Yours very truly,

FRED H. DAVIS,
Attorney General.

WRITS AND PROCESSES—DUTIES IN RE SERVICE

June 6, 1931.

Dear Sheriff:

Replying to yours of the 4th instant in which you ask to be advised regarding the procedure a Sheriff should follow in collecting debts owed his office, permit me to say that I assume, of course, that you have a local attorney to advise you, and I would suggest you take this matter up with him.

Replying to your second question, in which you ask to be advised as to whether or not you would be within the law to refuse service on papers brought in by attorneys and other people who have neglected to take care of their obligations, permit me to say it is our understanding that the Sheriff is authorized to require the payment in all civil cases of a deposit for costs.

There are writs and process which the statute specifically requires the Sheriff to serve. It is my opinion that you should not refuse to serve the process required by statute.

If you wish further information on this subject, permit me to suggest that you confer with your County Attorney or with the State Attorney.

Trusting you will find this to be satisfactory, and with best wishes, I am,

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES—IN RE SHERIFFS AND CONSTABLES

June 8, 1931.

Dear Sheriff:

Replying to yours of the 5th instant in which you state that there is some difference of opinion regarding whether or not the Sheriff or the Constable is entitled to the fee for an arrest made by the Constable, permit me to say the statute provides an arresting fee for the Sheriff for prisoners arrested by him, and of course this would include an arrest made by the Sheriff's deputy.

It would appear, therefore, that under a strict interpretation of the statute, where the Constable makes an arrest and delivers the prisoner to the Sheriff, neither the Sheriff nor the Constable is entitled to an arresting fee. I do not think there is any question about the Sheriff being entitled to a fee for commitment and release of prisoners, regardless of whether he made the arrest or the Constable made the arrest.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY COMMISSIONERS—CERTAIN FUNDS AUTHORIZED TO
BE TRANSFERRED FOR SHERIFF'S COSTS

July 21, 1931.

Dear Sheriff:

Replying to your favor of the 16th instant in which you state that the fine and forfeiture fund of your county is exhausted, and in which you ask whether or not the Sheriff's cost bills can be paid from the outstanding indebtedness fund, permit me to say that this cannot be done.

However, if there is a balance in any fund other than the fine and forfeiture fund, the County Commissioners would have authority by resolution, with the consent of the State Comptroller, to transfer any moneys from other funds, which the commissioners do not need in that particular fund, to the fine and forfeiture fund.

Yours very truly,

CARY D. LANDIS,
Attorney General.

JAIL—SHERIFF AUTHORIZED TO EMPLOY GUARDS AND OTHER
SERVANTS

July 21, 1931.

Dear Sheriff:

Replying to your favor of the 16th instant, in which you ask whether the Sheriff or the County Commissioners have authority to fix the pay of a servant employed for services around the jail, where the statute fixes same at not more than \$1.00 per day, permit me to say that if the statute

is silent on the question, it is my opinion that the Sheriff would have such authority.

Replying to your second question, in which you ask for an opinion on the statute providing for guard hire at the jail, permit me to say that former Attorney General Davis held that the statute permitted the Sheriff to employ a guard at the jail, and that his compensation should be \$2.00 per day.

He also held in the same opinion that the Sheriff and not the County Commissioners has the power to employ such guard. We see no reason to modify or change this rule.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COURT ATTENDANCE—FOUR DOLLARS PER DIEM ALLOWED
SHERIFFS

July 28, 1931.

Dear Sheriff:

Replying to your favor of recent date in which you state that there is a disagreement between yourself and the County Commissioners relative to payment of per diem for attendance on the Court by the Sheriff, permit me to say that this office has heretofore held and now holds that the Sheriff is entitled to \$4.00 per diem for attendance on the Court when his presence is reasonably necessary.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY JAIL—IN RE CARBIDE OR GAS LIGHTING SYSTEM

July 29, 1931.

Dear Sheriff:

This is in reply to your favor of July 27, in which you ask me to give you an opinion as to whether or not you, as Sheriff, would have the authority to object to a carbide or gas lighting system being installed in the County Jail, and I beg to advise that Section 1475, Revised Statutes of Florida, among other things, has the following provisions:

"The Board of County Commissioners of each county shall have power at any legal meeting . . . to make such orders concerning the care of and improvement of the corporate property of the county as may be deemed expedient, and, also (1) to build and to keep in repair county buildings, etc., (2) to cause county buildings to be insured, etc., and in case there is no public buildings, to provide *suitable rooms* for county purposes."

Sections 1556 and 1557 of the Revised General Statutes of Florida, also provide for the erection of Court Houses and Jails by the Board of County

Commissioners. It seems clear that the Legislature intends for the County Commissioners to provide suitable county jails and other public buildings.

On the other hand, the Sheriff is in exclusive charge of all persons lawfully committed to the county jail, and the Sheriff certainly should not be and would not be required by law to place any person in his charge in a place that might be dangerous, because of escaping gas or where there might be danger, as might be reasonably apparent to the Sheriff. If you feel that to install a carbide or gas lighting system in your jail, would be dangerous to those who are confined there under your exclusive charge, I think you could and should raise this question before your County Commissioners and some system of lighting which is safe should be installed. The law contemplates that boards and officials should work in harmony in their administration of their different duties, with a view of a full and proper administration of the law. Personally, I do not know whether a carbide or gas lighting system in a jail would be dangerous or not, but if there is any question about it, certainly the Board of County Commissioners, as well as yourself, should make a most careful investigation of this matter, for the reason that when people are locked in jail, they are helpless and at the mercy of such dangers that may exist in any such equipment.

Very respectfully,

CARY D. LANDIS,
Attorney General.

FEES—IN RE TRANSPORTING PERSONS COMMITTED TO INDUSTRIAL SCHOOLS AND STATE PRISON

August 19, 1931.

Dear Sheriff:

Replying to your favor of the 13th instant, in which you ask to be advised the amount which you may charge for transporting persons committed to the industrial school for boys and girls and for transporting prisoners to the State Prison at Railford permit me to say the statute allows 12½c per mile each way, \$4.00 per diem for the Sheriff and \$2.00 for each guard actually necessary, the necessity to be determined by the Comptroller, the expenses to be borne by the county in which the prisoner is convicted.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEEDING PRISONERS—AMOUNT ALLOWED

August 19, 1931.

Dear Sheriff:

Replying to your favor of the 15th instant in which you state that the Board of County Commissioners of your county has refused to allow you more than 50c per day for feeding each prisoner permit me to say

Section 2838 of the Compiled General Laws provides that the fees of the Sheriff for feeding 20 prisoners or less shall be 65c per day each, and for feeding all over 20 prisoners, 50c per day each.

The statute appears to be clear and definite and we can see no reason why there should be any misunderstanding between yourself and the Board of County Commissioners regarding the amount of fees to which you are entitled.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CONSTABLE—DUTIES AND FEES IN RE COMMITTING
PRISONERS TO JAIL

September 8, 1931.

Dear Sheriff:

Under date of August 15th you asked to be advised whether or not a Constable has the right to place a prisoner in the Martin County Jail without a commitment from the justice of the peace and should the person so committed be turned over to you as Sheriff or to the Martin County jailor. In reply, under date of August 19th, I stated that a commitment should be issued by the justice of the peace and that the prisoner should be delivered to the Sheriff or his deputies for commitment to jail and that we know of no authority under which a constable could commit a prisoner to jail.

At that time the writer was under the impression that a commitment to jail by an officer meant the opening of the jail door and the placing of the prisoner therein. Upon further investigation we find that Section 7523 of the Compiled General Laws makes it a criminal offense for any jailor or any officer to wilfully refuse to receive into a jail or into his custody a prisoner lawfully directed to be committed thereto on a criminal charge or conviction.

If the delivery by the Constable of a prisoner to the jailor can be construed to be a commitment to jail by the Constable, and we are inclined to believe that the courts, in view of the statutes, would so hold, and not wishing to compel the Constables to resort to legal procedure to collect their fees, it appears that it is necessary to hold that if the Constable delivers a prisoner to the jailor for commitment and the Constable delivers the prisoner by virtue of a commitment issued by a justice of the peace directing a Constable or other officer to deliver the prisoner to jail that it would be the duty of the jailor to accept the prisoner and that the Constable would be entitled to the same fee to which the Sheriff is entitled for like services, in view of the act of the Legislature of 1931, providing that Constables are entitled to the same fees as the Sheriff for like services.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MILEAGE—DEPUTY ALLOWED TO CHARGE—INCIDENTAL
EXPENSE ALLOWED

September 11, 1931.

Dear Sheriff:

Replying to your favor of the 8th instant permit me to say:

We note that your deputy who lives ninety miles from the Court House arrested a prisoner at that place and brought him to the Court House, that a charge of 12½c per mile for deputy and prisoner is made from the place of arrest to the Court House and that you contend that you are authorized to charge 12½c per mile for the deputy's return home, which was the place of arrest.

Section 4588, Compiled General Laws 1927, provides that mileage traveled by the Sheriff should be estimated from the Court House door to the point of execution of process, and that he is entitled to charge 12½c per mile each way. As you state, if you had gone to the place of arrest yourself and had returned the prisoner there would be no question about whether or not you would have been entitled to charge for going and returning, therefore, it is my opinion that the mileage charged in this case is legal.

Replying to your other question, relative to charging, incidental expenses incurred in transporting prisoners, permit me to say my predecessors in office have held that a Sheriff is entitled to necessary incidental expenses actually incurred, and I am not disposed to render an opinion to the contrary.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WITNESS FEES—PRISONER ENTITLED TO

September 22, 1931.

Dear Sir:

Replying to yours of the 18th instant, permit me to say:

The fact that a man is a prisoner does not deprive him of his right to witness fees.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES AND MILEAGE—ENTITLED TO WHEN RETURNING
PRISONER FROM ANOTHER STATE

October 8, 1931.

Dear Sir:

Replying to your favor of the 6th instant relative to whether or not a Sheriff of this State going to another State and returning a prisoner, is entitled to his mileage and expenses when the fugitive is released on bond or on writ of habeas corpus in the asylum State, permit me to say:

When a Sheriff of this State, armed with a proper requisition appointing him as agent of the State to convey a prisoner back to this jurisdiction for trial on a criminal offense duly charged against him in this State, goes out of the State for the purpose of apprehending and bringing back the prisoner named in the requisition, I am of the opinion that he is entitled to his mileage and other proper costs from the State to the point where the prisoner is held and returned even though the prisoner should give bond in the asylum State, or through no fault of the Sheriff should be released for habeas corpus proceedings or otherwise in the asylum State.

The right of the Sheriff to compensation is not made to depend upon the success of the Sheriff in securing the actual return of the prisoner to this State in his custody. When the Sheriff in good faith performs the services demanded of him in executing a proper requisition, such Sheriff has earned his compensation and should be paid the same without question.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEE—IN RE ENFORCEMENT OF PROHIBITION LAW

October 10, 1931.

Dear Sheriff:

Replying to your favor of the 7th instant, permit me to say for each seizure made by the Sheriff in the enforcement of the Prohibition Laws, the Sheriff is entitled to a fee of five dollars for the destruction or sale of the seized property, if such property so destroyed or sold was ordered by the Circuit Judge. The statute does not appear to authorize the five-dollar fee except when destruction or sale is ordered by the Circuit Judge.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SEARCH WARRANT—MUST BE PROPERLY ISSUED FOR SPECIFIC PURPOSE

October 14, 1931.

Dear Sir:

Replying to your letter of the 9th instant, I beg to advise that your powers and duties are co-extensive with those of the Sheriff of the county. The law requires that before you enter and search a house that you have a search warrant properly issued by the proper authority for the specific purpose for which the search is to be made.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INDUSTRIAL SCHOOL FOR BOYS—DUTY IN TRANSPORTING
BOYS

November 19, 1931.

Dear Sheriff:

Replying to your favor of the 16th instant, permit me to say the language employed in Section 8649, Compiled General Laws, expresses the legislative intent to impose upon the Sheriffs of the several counties the duty of transporting boys committed to the Industrial School.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FIRE ARMS—PERMIT NOT REQUIRED TO CARRY

January 16, 1932.

Dear Sir:

Replying to your favor of the 12th instant, permit me to say a Sheriff or deputy sheriff is not required to have a permit in this State as a prerequisite to carrying fire-arms.

Yours very truly,

CARY D. LANDIS,
Attorney General.CONVICTS, COUNTY—COUNTY COMMISSIONERS NOT AUTHORIZED TO EMPLOY ON HIGHWAYS AND STREETS WITHIN
INCORPORATED CITIES

January 23, 1932.

Dear Sir:

Replying to your favor of the 18th instant in which you ask to be advised whether or not county convicts may be employed on highways and streets within incorporated cities and towns, permit me to say:

Chapter 9203, Acts of 1923, which appears to be the last act on the subject, empowers the County Commissioners to require all county convicts under sentence confined in the jail of their respective counties for any offense, to labor upon the public roads, bridges, farms or other public works owned and operated by the county.

The act further provides that in the event the County Commissioners of any county deem it to the best interest of their county, they may hire out their prisoners to any other county in the State to be worked upon the public roads, bridges or other public works of that county. Or they may, upon such terms as may be agreed upon between themselves and the State Road Department, lease or let said prisoners to the said department instead of keeping them in the County Jail.

In view of the statute expressly providing the manner in which county convicts may be employed, it is my opinion that the County Commissioners would not be authorized to employ county convicts on streets within an incorporated city or town.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEE—PROSECUTING ATTORNEY

February 3, 1932.

Dear Sheriff:

Replying to your favor of the 1st instant, permit me to say the law allows the prosecuting attorney \$5.00 for each conviction. A plea of guilty and sentence by the Court is in contemplation of law a conviction. Where two defendants are charged with the commission of a crime, and each plead guilty under the same charge, it is my opinion that the prosecuting attorney would be entitled to \$5.00 for each person sentenced by the Court.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BOND, SUPERSEDEAS—STATUS OF PERSON DURING PENDENCY

March 22, 1932.

Dear Sir:

This refers to your letter of March 20th.

As I understand it, from the judgment of conviction in the Federal Court you have taken an appeal and have filed a supersedeas bond. A supersedeas bond is given for the purpose of superseding the judgment and hold the man in the same status as if there had been no judgment, unless and until the Appellate Court affirms the lower Court's judgment. It is my opinion that until the judgment and sentence is affirmed by the Appellate Court you are not disqualified as a citizen or as to any of your rights to becoming a candidate for the office of Sheriff or such other office to which you might aspire.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CONSTABLE—ENTITLED TO COSTS FOR RETURNING PRISONER FROM ANOTHER COUNTY

March 28, 1931.

Dear Sheriff:

Replying to yours of the 25th instant permit me to say that the Supreme Court of Florida in the case of Gray vs. Leon County, 96 Fla. 477, held that a constable who went from Leon County to Manatee County and returned a prisoner was entitled to his costs.

Therefore, it appears that the Supreme Court by this decision has said that a constable may go to another county and return a prisoner and collect his costs for so doing.

In reply to your second question in which you ask if prisoners ordered held for State prosecution by the municipal court in Jacksonville should be delivered to constables or to the Sheriff of Duval County, permit me to say that we know of no law which authorizes the judge of a municipal court to order anyone held for prosecution in the State courts. If the judge of the municipal court has the authority to order the prisoner held for prosecution by the State court, then the question of who would be entitled to custody of the prisoner would depend in our opinion upon the wording of the process issued by said municipal court.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REGISTRATION OFFICERS—MAXIMUM FEE

April 5, 1932.

Dear Sheriff:

Replying to your favor of the 14th ultimo, in which you advise that it is rumored in your county that the Deputy Registration officers have been authorized to charge voters that register to vote in the Primary Election on June 7th, 35c each, I beg to advise that Section 368 of the Compiled General Laws, which is a part of the Primary Election laws provides as follows:

"Maximum fee for each registration.

That Deputy Registration officers and Precinct Registration officers, authorized by the provisions of this article, shall not be paid for their services more than twenty-five cents for each registration, and no Board of County Commissioners shall pay them more for such services as may be required of them."

It is my opinion, in the light of the above statute that 25c is all that can be charged, or paid to a Deputy Registration officer, and that this charge is payable by the Board of County Commissioners of the county.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEEES AND MILEAGE—WHEN ENTITLED TO

April 12, 1932.

Dear Sheriff:

The correct answer to your letter of the 7th instant, with reference to whether you are entitled to mileage for going to West Palm Beach to return a prisoner to your county, depends on just what was done in the case, and this is not clear from your letter.

I notice that the party had made bond for his appearance at the next term of Court. You do not state, however, whether his bond had been estreated and a capias issued for his arrest. If this was done you would be entitled to your mileage, but if the bond was not estreated and capias issued, but you merely went for him because he failed to appear in pursuance of his appearance bond, you would not be entitled in law to any mileage or fee for re-arresting and returning him to your county, because that was the purpose for which the bond was given.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES FIXED BY GENERAL LAW

May 24, 1932.

Dear Sheriff:

Replying to your favor of the 19th instant, permit me to say Chapter 7886, Acts of 1919, appears to be an act which attempts to fix the fees of Sheriffs in counties of a population of 40,000 or more. The fees to which Sheriffs are entitled are fixed by a General Act, Section 4588, Compiled General Laws, which was passed by the Legislature of 1925 and supersedes prior acts.

I do not think that a Sheriff should charge for "copy of process," unless the copies were actually made in the Sheriff's office. Where copies are made by an attorney and furnished to the Sheriff I do not think the Sheriff should make a charge for a service he did not render.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTION INSPECTOR—COUNTY COMMISSIONERS SHOULD APPOINT

March 25, 1932.

Dear Sheriff:

Replying to yours of the 23rd instant, permit me to say the election inspectors should be selected and appointed by a majority of the Board of County Commissioners. I do not think that one member of the board would have any authority to appoint inspectors for any particular precinct without the concurrence and approval of a majority of the members of the board.

The statute provides that if on the morning of the election an inspector or

clerk fails to appear for service, the other members of the board may administer an oath to a qualified elector, and appoint him as an inspector or clerk to serve in the place of the absent member. See Section 307, Compiled General Laws.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PRIMARY ELECTION—CERTAIN PERSONS NOT QUALIFIED
TO VOTE

May 31, 1932.

Dear Sheriff:

I am in receipt of your letter of May 25, with reference to persons convicted of felonies voting in the primary under the provisions of Section 248, Compiled General Laws, 1927, in which you state that you have in mind certain persons convicted and sent to prison whose names were removed from the registration books of the county by the County Commissioners, and who were restored to citizenship after the registration books were closed.

Under the provisions of Sections 248, above mentioned, and under the provisions of Section 4 of Article VI of the State Constitution, persons convicted of felony by a Court of Record are not qualified to vote at any election, unless restored to civil rights.

Section 2 of Article VI of the Constitution provides as follows:

"The Legislature, at its first session after the ratification of this Constitution, shall provide by law for the registration of all the legally qualified voters in each county, and for the returns of elections; and shall also provide that after the completion, from time to time, of such registration, no person not duly registered according to law shall be allowed to vote."

Section 16 of Chapter 13761, Acts of 1929, provides, among other things, as follows:

"Nor shall any person be permitted to vote at any such election whose name does not appear on the registration books as required by law."

I know of no statutory authority under which persons may have their names placed on the registration books whose civil rights, after conviction of a felony, have been restored subsequent to the closing of the registration books; and, under the provisions of Section 2 of Article VI of the State Constitution and Section 16 of Chapter 13761, Acts of 1929, above quoted, the law definitely states that persons whose names do not appear on the registration books, as required by law, shall not be permitted to vote.

You make further inquiry as to whether Section 458, Compiled General

Laws, 1927, has been repealed or amended. In reply, I beg to say that the same has not been repealed or amended.

In connection with this statute, I call your attention to Section 5 of Article VI of the State Constitution, giving the Legislature authority to pass such laws with reference to excluding from office persons convicted of infamous crime.

Very truly yours,

CARY D. LANDIS,
Attorney General.

PRIMARY ELECTION—SHERIFF ENTITLED TO MILEAGE

June 14, 1932.

Dear Sheriff:

I am in receipt of your letter of the 11th instant, in which you advise that on June 6th the Sheriff had to travel to each of the thirty-seven precincts in the county and give a special appointment to a man at each of these precincts as a special deputy for the June 7th primary, and you make inquiry as to whether the Sheriff is entitled to mileage for this service.

Section 419, Compiled General Laws, provides that the general election law shall apply, unless otherwise provided by the Primary Election Law.

Section 339 of the General Election Laws provides for a deputy sheriff to be deputized by the Sheriff of the county for each polling place in the county, and requires him to be present during the whole time that the polls are kept open.

Section 362, Compiled General Laws of 1927, provides for payment of expenses of holding primary elections.

Where it was actually necessary to travel to a polling place to make such an appointment, and where the Sheriff did actually travel to a polling place for such purpose, I think he would be entitled to mileage fees for this service. But mileage should not be charged separately from the Court House to each polling place and return, for the reason that the several polling places in the county may be visited without necessarily returning to the Court House from each polling place, and only the actual and necessary mileage should be charged for.

See Section 4592, Compiled General Laws of 1927.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTION DAY—DUTIES OF SHERIFF

June 25, 1932.

Dear Sheriff:

Replying to your telegram of this date, permit me to say the sheriff and/or his deputies should not approach nearer than fifteen feet of the polling place on election day while ballots are being cast unless called by the inspectors to preserve order or to make an arrest for a violation of the law. Of course, where one or more than one person may engage in a fight or brawl such as would disturb the orderly conduct of an election, the sheriff or his deputy should arrest the offending person or persons.

Only the inspectors of election are permitted to act under the provisions of Sections 332 and 333, Compiled General Laws, 1927.

The general powers of the sheriff and/or his deputies at the polling place on election day are to preserve peace and order.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

BAIL BOND—DUTY OF SHERIFF

September 17, 1932.

Dear Sheriff:

Replying to yours of September 12, permit me to say, when a bail bond is given and it is not paid on or before the expiration of ninety days from the date of its execution it becomes the duty of the sheriff to return the bond to the court, in which conviction occurred, endorsed "*not paid*" and to take the person convicted into custody and cause such person to begin the service of the sentence as imposed by the Court without further order or procedure. The convicted person should be required to serve out the entire sentence unless it is an alternative sentence where the imprisonment is imposed upon failure to pay the fine and cost. If the fine and cost are paid at any time while the convicted person is serving the sentence, of course, the convicted should be released and credited with the time served.

Permit me to suggest that you take this and similar questions up with your county attorney, with whom you can talk personally and who can advise you in greater detail than we can do by letter.

Very truly yours,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICTS

SCHOOL TEACHERS—WHO AUTHORIZED TO APPOINT

July 9, 1931.

Dear Sir:

Replying to yours of the 6th instant, in which you request this office to furnish the school trustees of your special tax school district an opinion on the question of whether or not the trustees are authorized to appoint teachers in your county, permit me to say the general statute on this subject provides that the trustees may recommend a first and second time the names of teachers to the school board but that the school board has the authority to reject the recommendations made by the trustees. It may be there is a special Act applicable to your county covering this subject, therefore, permit me to suggest that you take this matter up with the attorney for the school board or with the county attorney, either of whom can advise you relative to the authority of the trustees under any special Act that might be applicable to your county.

We should be pleased to search the statutes for you under ordinary circumstances, but we ask that you remember that the State Legislature has been in session for the past ninety days and their being here has added an unprecedented volume of work upon the personnel of this office.

Yours very truly,

CARY D. LANDIS,
Attorney General.MILLAGE—REDUCTION TO BE MADE BY VOTE OF FREE
HOLDERS IN DISTRICT

August 21, 1931.

Dear Sir:

Replying to your favor of the 19th instant, in which you ask to be advised whether or not the Board of Public Instruction or the Trustees of a Special Tax School District have the power to reduce the millage heretofore voted in a Special Tax School District, permit me to say the reduction can be made only by vote of the free holders of the Special Tax School District.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SCHOOL TEACHERS—BOARD OF PUBLIC INSTRUCTION
AUTHORIZED TO EMPLOY

July 16, 1931.

Dear Sir:

Replying to your favor, of the 14th instant, in which you ask for a definite statement from this office regarding the authority of the school board in employing teachers, permit me to say that Paragraph six, Section 561, Compiled General Laws, authorizes Boards of Public Instruction to employ teachers for every school in the county, and to contract with and pay the same for their services.

Section 562, Compiled General Laws, provides that the Boards of Public Instruction of counties in the State of Florida having a population of more than 8,600 and less than 9,000, according to the Federal Census of 1920, shall employ as teachers for the schools of any Special Tax School District of said counties, all or any part of which District is within the limits of any incorporated town or city, the teachers recommended for such school by the trustees of such district.

Section 710 of the Compiled General Laws of 1927, provides that all public schools conducted within a Special Tax School District, shall be under the direction and control of the County Board of Public Instruction and County Superintendent, as in other districts and subject to the same laws, rules and regulations prescribed for the conduct of other schools, except that the trustees shall have the power to nominate to the County Boards of Public Instruction, teachers for all schools within such special district. The same section provides further that the County Board of Public Instruction shall have the right to reject any teacher nominated, and in case the second nomination of the teacher for any position be not ratified, the said Board shall then proceed on its own motion to fill the vacancy in the teaching force of any Special Tax School District.

You will see from the sections quoted that the trustees have no power in the selection or employment of teachers in a Special Tax School District, other than the power to nominate the teachers, subject to the acceptance or rejection by the Board of Public Instruction, unless your county happens to come within the terms of the statute quoted in the second paragraph of this letter.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SUPERVISORS OF REGISTRATION

BALLOT BOXES—DISPOSITION OF CONTENTS

February 28, 1931.

Dear Sir:

There is no necessity of preserving the ballots used in a general election beyond the time within which a contest over the election could be made. The law provides that election contests in general election cases must be instituted within twenty-five days after the results are declared by the

Canvassing Board. These results have long since been declared, and it would now be impossible to have a contest over the result of the general election.

This being true you are at liberty to open any of the ballot boxes and take out any books or papers which may be locked up therein, and if you want to you have the right to empty the ballot boxes entirely and destroy the ballots.

Yours very truly,

FRED H. DAVIS,
Attorney General.

BALLOT BOXES—POLL LISTS, ETC.—TO BE PRESERVED

June 4, 1931.

Dear Sir:

Replying to yours of the 2nd instant, permit me to say Section 349 of the Compiled General Laws of 1920 was amended by Chapter 13761, Acts of 1929. Section 406 of said Chapter requires the Supervisor of Registration to carefully preserve under seal the poll list and oaths of the inspectors and clerks together with all ballot boxes, ballots, ballot stubs, memoranda and papers of all kinds used by the inspectors and clerks until after the next succeeding general election.

Therefore it would appear to be essential that the county have two sets of ballot boxes.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTOR—WHEN DISQUALIFIED

June 19, 1931.

Dear Sir:

Replying to your favor of the 18th instant, in which you ask to be advised whether or not a person who has heretofore been convicted of larceny is entitled to have his name on the registration books as an elector of the county, permit me to say under the provisions of Section 238, Compiled General Laws, it appears that a person so convicted is not entitled to vote.

If you know of a person who has been convicted of larceny whose name appears upon the registration books of the county as a qualified elector, it is my opinion that you would be within the law if you erased the name of such person from the registration list. The Supreme Court in the case of *State vs. Buckman*, 18 Fla. 267, held that a conviction of petty larceny disqualifies a person from voting in this State.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTOR—SUSPENSION OF SENTENCE DOES NOT REMOVE
DISQUALIFICATION

June 25, 1931.

Dear Sir:

Replying to your letter of the 23rd instant, I beg to advise that the suspension by the Court of a sentence which disqualifies an elector to vote, does not remove such disqualification any more than a conditional pardon.

A suspension of sentence merely postpones the execution of such sentence, and the same remains in force until satisfied by execution or until set aside by a Court of competent jurisdiction.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BOND ELECTION—WIFE NOT ELIGIBLE TO VOTE

July 13, 1931.

Dear Sir:

Replying to your favor of the 29th instant, in which you state that you are about to hold a "bond holder's election," and in which you ask whether or not the wife of a man owning real estate is eligible to vote as a free holder, permit me to say:

It is my opinion that she would not be eligible to vote because she would not have an immediate beneficial ownership interest, legal or equitable, in the title to a fee simple estate in land, such as would constitute her a freeholder.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REGISTRATION—WHEN REQUIRED BIENNIALY

August 4, 1931.

Dear Sir:

Replying to your favor of the 29th ultimo, in which you ask whether or not counties are compelled to have a re-registration of electors where there are cities or towns located in such counties with a population of 20,000 or more, permit me to say:

Section 366, Compiled General Laws, provides that in all election precincts located wholly or in part within a city of more than 20,000 population biennial registration shall be required.

It is not necessary to have a re-registration in every precinct in the county, but under the provisions of the Section above quoted, it is mandatory that a re-registration of electors be had in those precincts located wholly or in part within a city of more than 20,000 population.

We regret that we are unable to advise you that a re-registration is not necessary, but the law appears to be definite on the subject, and we can see no way that it could be legally evaded.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REGISTRATION BOOKS—REQUIRED BOOKS SHOULD BE SENT TO EACH PRECINCT

August 10, 1931.

Dear Sir:

Replying to your favor of the 7th instant, in which you ask to be advised whether or not the Supervisor of Registration should open the Registration Books in all of the various precincts of the county when an election is called by the County Commissioners on the question of whether or not racing shall be permitted in the county, permit me to say that this office has ruled that the Registration Books should be sent to each and every precinct in the county.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY COMMISSIONERS—AUTHORITY TO REDUCE SALARY

November 16, 1931.

Dear Sir:

Replying to your favor of the 9th instant, in which you ask to be advised as to the legal authority of the county commissioners to reduce your salary as supervisor of registration from \$75.00 per month to \$50.00 per month, permit me to say:

Section 259, Compiled General Laws, authorizes the county commissioners to fix the salary of the supervisor of registration at not less than \$100 per annum. The salary of the supervisor of registration in some counties is fixed by special acts based on population, and unless your county comes within the population expressed in one of the special acts, it is my opinion that the county commissioners would have the authority to fix your salary as provided by Section 259, Compiled General Laws.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REGISTRATION BOOKS—CONSTRUCTION OF STATUTE IN RE
PINELLAS COUNTY

November 25, 1931.

Dear Sir:

Replying to your favor of the 21st instant, in which you ask several questions regarding House Bill 191-X, governing the registration of electors in Pinellas County, permit me to say:

It is my opinion that the statute is valid as the Constitution does not require a uniform system of registration of electors throughout the State.

With regard to your second question, the Act requires the registration books to be kept open from 9 A. M. to 5 P. M. each week day in the office of the supervisor of registration. This would appear to require that the office remain open continuously from 9 A. M. until 5 P. M. every day of the week except Sunday.

However, if you wish to close your office for the noon hour, you might leave the books open in the office, and at the same time comply with a literal construction of the statute. I do not believe the Legislature intended to require you to keep the doors of your office open continuously during every day of the week except Sundays.

Replying to your third question, permit me to say that Section 5 appears to provide for sending the registration books to the precincts in the same manner and at the same time as heretofore. Section 6 appears to authorize the board of county commissioners to employ and fix the compensation of clerical help for the supervisor of registration.

Yours very truly,

CARY D. LANDIS,
Attorney General.

POLL TAXES—LAST DATE FOR PAYMENT

December 7, 1931.

Dear Sir:

Replying to your favor of the 1st instant, in which you ask to be advised whether or not the Supreme Court has ruled that those liable for poll taxes must pay them on or before the fourth Saturday preceding the election, permit me to say:

Section 371, Compiled General Laws, requires the payment of poll taxes on the second Saturday in the month preceding the day of a primary election.

Section 248 of the Compiled General Laws, relates to general elections and requires the payment of poll taxes on or before the fourth Saturday preceding the day of the election.

In the case of *State vs. White*, 73 Fla. 426, the Supreme Court held that the word "month" means calendar month or that period of time elapsing between a given date and the corresponding date of the next preceding month by name.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BALLOT BOXES—DESTRUCTION OF CONTENTS

December 8, 1931.

Dear Sir:

Replying to your favor of the 3rd instant, permit me to say:

The statute does not expressly provide for the destruction of primary election ballots after the general election. But it does provide that the ballot boxes may be opened after the general election. I can see no good purpose to be served in keeping the primary election ballots after the general election, and I would suggest that if it has been the practice in Putnam County heretofore to destroy such ballots after the general election, that you pursue the same course in this matter that has been the practice heretofore.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REGISTRATION BOOKS—OPENING AND CLOSING

December 12, 1931.

Dear Sir:

Replying to your favor of the 11th instant, in which you ask to be advised whether it would be legal for you to keep the registration books open longer than the ten day period provided under Chapter 14832, Acts of 1931, permit me to quote the 3rd paragraph of Section 6 of said Chapter, which reads as follows:

"That for such election registration books of such county shall be opened on the 10th day (if the said tenth day be Sunday or a holiday then on the next day not a Sunday or a holiday) after said election is ordered and called, and shall remain open for a period of ten days for additional registration of persons qualified for registration not already registered, and electors for such special elections shall have the same qualifications for and pre-requisites to voting in elections as under the general election laws."

Permit me to say, if you should keep the registration books open for a longer period than ten days or until the date provided for the closing of

the registration books in the case of a general election, which would be until the second Saturday of the month preceding the day of the election, I do not think it would invalidate the election.

The statute provides that the books shall remain open for a period of ten days. In view of the wording of the statute, I think it would be illegal to keep the books open for a less period than ten days, but I do not think it would be illegal to keep them open for a longer period.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REGISTRATION BOOKS—TIME FOR CLOSING

December 22, 1931.

Dear Sir:

Replying to your favor of the 19th instant, permit me to say that if on the 30th day of April, 1932, you register all persons in line and in process of registration at the legal closing time, 5 P. M., and then close down and decline to register any more, you will have done all the law requires you to do.

If you should decide to give some extra time and keep your books open after 5 P. M., it is my opinion you would be within the law to close your books at any time after 5 P. M., that you may see fit to do so, because the statute does not require you to keep your books open after 5 P. M., April 30, 1932.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PRIMARY ELECTION—CONSTRUCTION OF STATUTE IN RE POLL TAXES, REGISTRATION BOOKS, HELP, COMPENSATION, ETC.

January 22, 1932.

Dear Sir:

This refers to the several questions contained in your letter under date of January 12th.

You ask to be advised upon what day the registration books of your county should be closed before the Primary Election is held in 1932. Permit me to say that the statute requires the registration books to be kept open between the first Monday in April and May 1st. Therefore, you should close your books on April 30th and not re-open them until after the second primary which will be held on June 28th, 1932.

You ask to be advised as to the last day preceding the Primary upon which poll taxes may be paid. Section 16 of Chapter 13761, Acts of 1929, provides that no person unless exempt under the provisions of law relating to General Elections, shall be permitted to vote at a Primary Election, who shall have failed to pay on or before the third Saturday preceding the day of the first Primary Election, his poll taxes for the two years next preceding the year in which such primary shall be held. Nor shall any person be permitted to vote at any such election whose name does not appear on the registration books as required by law.

The third Saturday preceding the day of the first primary in 1932 will be May 21st and that will be the last day upon which poll taxes may be paid before the Primary of June 7th, 1932.

Replying to your third question, in which you ask to be advised what compensation, if any, the Supervisor of Registration is entitled to for making the new registration of electors in your county, permit me to say the compensation to which you are entitled for making the re-registration is governed by Section 6 of Chapter 15629, Acts of 1931, which provides that the compensation to be paid the Supervisor of Registration in lieu of all other compensation now allowed by law for his services as such shall be the sum of \$2,400 per annum payable in equal monthly payments of \$200 each.

Section 5 of the chapter provides that the registration and/or re-registration shall be made by district registration officers under the supervision of the Registration officer in the same manner and at the same time or times as now provided by law prior to the holding of any primary or general election, and provides that the compensation for such district registration officers shall be allowed and paid by the Boards of Commissioners, and shall not exceed in the aggregate 15c for each registration. And this same section provides that each district registration officer shall receive for his official duties in being custodian of the registration books in his precinct during the time prescribed by law, an amount to be fixed by the Board of County Commissioners, which shall not be less than \$5.00.

Section 6 provides that the Board of County Commissioners shall furnish the Supervisor of Registration such clerical help as in the opinion of said board will be capable and efficient, and shall fix the salary to be paid for same. It also provides that all income received by the Supervisor of Registration from the furnishing of lists for city or special district elections shall be paid over to the Board of County Commissioners.

Replying to your fourth question in which you ask to be advised whether or not there is any law against the supervisor of registration appointing a deputy to make the registration by taking a book and making a house to house canvass in order to get the voters registered between now and the first Monday in April, permit me to say:

Section 3 of Chapter 15629, Acts of 1931, provides that on and after January 1st, A. D., 1932, the county registration books in your county shall be kept open on each week day from 9:00 A. M. to 5:00 P. M., in the office of the Supervisor of Registration in each of said counties for the registration

of electors for all general, special and primary elections, and there is no provision in this chapter nor in the General Primary Election Law, which authorizes the supervisor of registration to appoint one or more deputies to make a house to house canvass for the purpose of having electors registered.

The general law governing registration for Primary Elections, Section 363, Compiled General Laws, 1927, provides that the county registration books for each election district, shall be open on each week day from 9 A. M. to 12:00 M., and from 2:00 P. M. to 5:00 P. M., and one night each week until 9:00 P. M. at some convenient place in each election district in each county of this State from the first Monday in March to and including the first Monday in April.

You will note that the statute provides for the books being open at some convenient place in each Election District. It is my opinion that the language quoted above precludes the idea of the registration books being carried from house to house for the purpose of registering electors.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTION—DISPOSITION OF TALLY SHEETS

February 26, 1932.

Dear Sir:

Replying to your favor of the 13th instant, in which you request my opinion regarding the disposition which should be made of the tally sheets of the inspectors and clerks of the Primary Election, prior to the official canvass, permit me to say the statute of course defines the duties of the inspectors and clerks in connection with the tally sheets. However, I am thoroughly in accord with your view that the Supervisor of Registration should not permit the promiscuous handling of the tally sheets by anyone other than the election officers, prior to the official canvass.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CANDIDATE—WHEN NOT ELIGIBLE TO RUN

January 27, 1932.

Dear Sir:

Replying to your favor of the 22nd instant, in which you ask to be advised whether or not the fact that you are a District Registration officer would render you ineligible to hold some other county office, permit me to say Section 258, Compiled General Laws, reads in part as follows:

"The Supervisor of Registration shall not be eligible to any other office until six months after ceasing to be such supervisor."

This office has heretofore expressed the opinion that the provision above quoted is a bar to the right of the Supervisor of Registration to be either a candidate for, be appointed or elected to, or to hold any office until after six months ceasing to be such Supervisor of Registration.

The statute does not expressly refer to District Registration officers and the Court would probably not go so far as to hold a District Registration officer to be ineligible to be a candidate or hold an office until six months after ceasing to be such District Registration officer, but in view of the provision of the statute and the ruling of this office relative to the Supervisor of Registration, it is my opinion that it would probably be best for you to resign as District Registration officer if you are a candidate for a county office, otherwise the question might be raised and it would not help your chances of election.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DEMOCRATIC PARTY—WHO DECLARED MEMBERS

March 28, 1932.

Dear Sir:

Replying to your favor of the 24th instant, permit me to say Section 377 of the Compiled General Laws, reads as follows:

"The State Executive Committee of each political party may by resolution declare the terms and conditions on which legal electors shall be declared and taken as proper members of such party, and therefore entitled to vote in the Primary Election herein required to be held, as members of that party. It shall be the duty of the Supervisor of Registration of the various counties in the registration of electors to comply with the terms of any such resolution upon the filing with them of copies thereof duly certified by the chairman and secretary of any such Executive Committee, at any time before the opening of the registration books as herein required."

The State Executive Committee of the Democratic Party of Florida convened in annual session at Jacksonville on the 19th day of February, A. D., 1932, and by resolution No. 1 called a Democratic primary for the nomination of Democratic candidates for office to be elected in November, 1932. I have carefully read the call and I do not find in the resolution, "the terms and conditions on which legal electors shall be declared and taken as proper members of such party, and therefore entitled to vote in the Primary Election herein required to be held as members of that party." Therefore, it appears that *any person* otherwise qualified, who registers and takes the oath and declares himself to be a Democrat, is to be recognized as such.

I do not find any provision in the law for a Congressional Committee of a party to by resolution declare the terms and conditions on which legal electors shall be declared and taken as proper members of a political party. The law apparently leaves this clearly within the discretion of the State Executive Committee of any political party in the State of Florida.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PRIMARY ELECTION—CONSTRUCTION OF LAW IN RE LEGAL VOTING AGE

April 5, 1932.

Dear Sir:

This refers to your favor of the 18th ultimo.

Section 312 of the Revised General Statutes of Florida, provides that any person, otherwise qualified who shall become of legal voting age between the date of the closing of the registration books and the holding of the Primary Election, may upon personal appearance before the Supervisor of Registration make an affidavit containing the age on which he will have become of legal voting age and thereupon the supervisor shall register him.

Under this section a person who becomes 21 years of age in September, 1931, cannot lawfully register and vote in the Primary of June 7th, 1931, but all those persons who become 21 years of age on or before June 7th, 1931, even though not fully 21 years of age at the time of registration may under Section 312 register and vote in the coming primary.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PARTY AFFILIATIONS—ELECTORS MAY CHANGE

April 6, 1932.

Dear Sir:

This refers to your favor of the 4th instant, relative to the question of change of party affiliation by a voter.

Section 365 of the Compiled General Laws, 1927, provides a method by which electors may change their party affiliation on the registration books in all counties and precincts which are not located wholly or in part within a city of more than 20,000 population. Electors in cities of more than 20,000 population must re-register biennially, and this is the time when they can change their party affiliation if they wish to do so, and after they have registered in the biennial registration then there is no law by which this party affiliation can be changed until the next biennial registration.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

POLL TAX—WHO LIABLE FOR

April 7, 1932.

Dear Sir:

This is in reply to your favor of April 5th.

The law does not regard fractions of a year with reference to the payment of poll taxes. All taxes are due as of January 1st. A party who becomes of the age of 21 years after January 1st, 1931, is not liable for poll tax only for the year 1932.

You speak of a man arriving at the age of 65 years. I presume you mean 55 years, as persons over the age of 55 years are exempt from the payment of poll taxes, but the rule with reference to the fraction of the year applies to this exemption as well as the liability. If a man did not become of the age of 55 years until after the first day of January of any year, he would then be liable for the poll tax of that year.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PRIMARY ELECTION—PREREQUISITE TO REGISTER AND VOTE

April 9, 1932.

Dear Sir:

As an exception to the requirement as a prerequisite to the right to register and vote, Section 369 of the Compiled General Laws of Florida, 1927, provides that any person otherwise qualified, who shall have resided in the State one year and in the county six months, between the date of the closing of the registration books and the holding of the General Primary Election, may upon personal appearance before the Supervisor of Registration make an affidavit containing the date on which he will have completed a legal voting residence in the State or county, and shall thereupon be registered and be a qualified elector in said Primary Election.

Yours very truly,

CARY D. LANDIS.
Attorney General.

DEMOCRATIC PRIMARY—WHITE DEMOCRATIC VOTERS ONLY
ALLOWED TO PARTICIPATE

April 11, 1932.

Dear Madam:

Section 377 of the Compiled General Laws of Florida, 1927, empowers the State Executive Committee of each political party to declare by resolution the terms and conditions on which legal electors shall be declared and taken as proper members of such party, and their right to vote in the Primary Election as members of that party. It is further provided therein that

when copies of such resolution duly certified by the chairman and secretary of such executive committee are filed with the Supervisor of Registration of the various counties, it shall be the duty of the Supervisor of Registration, in registering electors, to comply with the terms thereof.

I have heretofore held that in order to confine the right to vote in the Democratic Primary Election to white people, the State Democratic Executive Committee must first so declare by resolution duly adopted and certified by the chairman and secretary to the respective Supervisors of Registration of the various counties, and that in the absence of such resolution and certificate, any elector otherwise duly qualified would be entitled to participate in the Democratic Primary Election, and this is undoubtedly true. However, the question now arises as to whether the terms and conditions declared and fixed by the State Democratic Executive Committee in resolution duly adopted prior to the holding of a primary election prior to 1932, would become the fixed rule and continue until changed by action of the Executive Committee. In my opinion, the law is susceptible of that construction.

I am advised that the records in the office of the Secretary of State show that such resolution was adopted by the State Democratic Executive Committee in the year 1920 and again in 1926, confining the right to participate in the Democratic Primary Election to white Democratic voters, and in this last resolution, to-wit: the one adopted in 1926, was duly certified to the Supervisor of Registration of the several counties as required by law, that rule will continue until changed by action of the Democratic Executive Committee, and the right to participate in the Democratic Primary Election will be confined to white Democratic voters otherwise duly qualified.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REGISTRATION OF VOTER—TRANSFER CERTIFICATES SHOULD
BE ISSUED

April 12, 1932.

Dear Sir:

This refers to your favor of April 11th, relative to the question as to when the Supervisor of Registration should issue transfer certificates.

I note that you state it has been the custom to make transfers of registration from one precinct to another whenever they are called for, even if it should be on the day of the election. I find nothing in the law specifically covering this question, but the policy of the law and the holdings of the Court has always been in favor of giving every person the right to vote. In other words, the law is construed liberally in favor of the voter, therefore, it is my opinion that the custom which you mention is proper and that transfer certificates should be issued by your office at any time, even

up to and including the days of the election. While this may be a bad practice from a practical standpoint, yet it is an argument that might appeal to the Legislature rather than to an administrative officer.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

PRIMARY ELECTION—PREREQUISITES TO VOTE

April 12, 1932.

Dear Sir:

I beg to reply to your letter of the 7th instant, corresponding to your numbered questions as follows:

(1) Poll lists given out by the Supervisor of Registration shall contain nothing more than the names, occupations and residences of the electors shown. See Section 379, Compiled General Laws.

(2) In my opinion any method used for identification in the registration of married women either as to their own initials or the initials of their husbands, is permissible.

(3) The notification of change of residence from one voting precinct to another in the same county is not required to be in writing. See Sections 296, Compiled General Laws.

(4) If A arrives at the age of 56 years after January 1, 1931, he would not have to pay poll tax for 1931 as a right to vote in the election for 1931. Fifty-five is the age limit beyond which no poll tax is required as a prerequisite to the right to vote.

(5) If B was 56 years old in March, 1932, and registers for the first time on April 1, 1932, he is liable for his poll tax for both 1930 and 1931 to entitle him to vote. In other words, if B becomes 55 years old on or after January 1, 1931, he is liable for poll tax for that year as a condition to his right to vote this year, but would not be liable for any further poll tax.

(6) A person becoming 21 years of age after January 1st, 1931, is not required to pay any poll tax as a condition to vote during the present year.

(7) A person who has been in the State only one year at the time of registering is required to pay only one poll tax, provided he can produce a poll tax receipt from the State from which he moved, but if he cannot for any reason produce such poll tax receipt from another State, then he must pay for the two preceding years, provided, of course, he is not exempt on account of being under-age or over-age as the case may be.

(8) May 21, 1932, is the last date on which poll taxes may be paid to qualify voters to vote in the 1932 primaries.

Yours very truly,

CARY D. LANDIS,
Attorney General.

POLL TAX RECEIPTS—CONSTRUCTION OF LAW

April 15, 1932.

Dear Sir:

I am in receipt of your letter of the 21st ultimo, making inquiry as to when the Tax Collector should deliver to you duplicate copies of poll tax receipts.

In reply I beg to say that Section 372 requires such copies of poll tax receipts to be furnished to the Supervisor of Registration by the Tax Collector, but no date is given for the same.

Under Section 910 the Tax Collector is required on the first day of each month to make out and present to the County Commissioners a statement giving the names of the parties who have paid their poll taxes, and under Section 911 the Tax Collector is required on or before the 10th of every month to file with the Board of Public Instruction a certified list of the names of all persons whose poll taxes were paid during the previous month, giving the year for which payments were made.

Your attention is also called to Section 490, Compiled General Laws, which provides that all State, county and municipal records shall at all times be open for a personal inspection of any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REGISTRATION BOOKS—REGISTRATION REQUIREMENTS

April 21, 1932.

Dear Sir:

Replying to your favor of the 14th instant, addressed to my assistant, Mr. Campbell, in which you ask to be advised whether or not the registration officer may take the registration books out into the precincts and personally register electors, permit me to say the statute provides for the registration books remaining open in the office of the Supervisor of Registration between certain dates, and the statute also provides for the precinct registration books to remain open at a designated place in the precincts between certain dates.

It seems to me in view of the statutory provisions that the law does not permit either the Supervisor of Registration or a District Registration officer to take the registration books to the electors. The statutes, it seems to me, require electors to go to the place where the registration books are required by statute to be kept open.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CANDIDATES—IN RE NOMINATION

April 22, 1932.

Dear Sir:

Replying to your favor of the 20th instant, permit me to say the statute requires that a political party which cast 30% of the vote in either of the last two preceding general elections to nominate their candidates by primary, and the statute provides that except in case of death or disqualification between the date of the primary and the general election, the name of a candidate of a political party in the State of Florida cannot be placed upon the General Election ballot unless nominated in the Primary Election. Where death or disqualification intervenes between the primary and the general election, a political party which cast 30% of the vote in either of the two last preceding General Elections may nominate candidates by their appropriate Executive Committee. See Chapter 13761, Acts of 1929. Also Chapter 14657, Acts of 1931.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PARTY AFFILIATION—STATUTORY PROVISION

April 22, 1932.

Dear Sir:

Replying to your favor of the 19th instant, permit me to say it appears that there is no provision made by statute for a person to change his political party affiliation except in precincts which are located wholly or in part in a city of more than 20,000 population.

The purpose of the statute was to make it possible in counties where voters are not required to register biennially to change their party affiliation. The presumption is that a person who is required to register every two years would know at the time of registration with which party he wishes to be affiliated.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BALLOT BOXES—COUNTY COMMISSIONERS REQUIRED TO
FURNISH THREE SETS

April 27, 1932.

Dear Sir:

Replying to your favor of the 19th instant, permit me to say the statute very definitely requires the poll list and oaths of the inspectors and clerks of the Primary Election, together with all ballot boxes, ballots, ballot stubs, memoranda, and papers of all kinds used by the inspectors and

clerks in conducting such election, to be transmitted sealed up by the inspectors to the Supervisor of Registration to be filed in his office and carefully preserved by him until after the next preceding General Election.

In construing this provision of the statute, former Attorney General Davis in a letter dated September 20, 1928, stated that the commissioners are required to have two sets of ballot boxes—one for the Primary Election and one for the General Election. The Legislature of 1929 re-established the two-primary system. Therefore, whereas the statute required two sets of ballot boxes under the one-primary system, it now requires three sets—two to be used for the primaries and one for the General Election.

I gain the impression from your letter that you may be of the opinion that a separate ballot box is required for Democratic voters and Republican voters, but I find nothing in the statute requiring separate ballot boxes.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CAMPAIGN LITERATURE—CERTAIN EXPENSE AUTHORIZED TO
BE PAID BY COUNTY COMMISSIONERS
POLL TAX—WHEN VETERAN EXEMPT

April 27, 1932.

Dear Sir:

Replying to your favor of the 27th instant, in which you ask to be advised whether or not the State or county pays the Supervisor of Registration for mailing out campaign pamphlets, permit me to say it appears that under the provisions of Section 362, Compiled General Laws, the payment of any and all necessary help which is required by the Supervisor of Registration to properly conduct the Primary Election, is payable by the County Commissioners. However, the commissioners have an absolute discretion as to how much help they will allow and pay for.

The statute does not expressly provide compensation to the registration officer for addressing and mailing the campaign pamphlets.

Replying to your second question, in which you ask to be advised whether or not World War veterans are exempt from the payment of poll taxes, permit me to say a veteran is not exempt from the payment of poll taxes, unless disabled while actually serving in the war.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTOR—METHOD OF QUALIFICATION

May 19, 1932.

Dear Madam:

Replying to your favor of the 16th instant, permit me to say Section 369, Compiled General Laws, provides that a person who will complete a legal residence in the county or become 21 years of age between the closing of the registration books and the Primary Election, may by appearing before the Supervisor of Registration and making an affidavit, be permitted to register as an elector.

Yours very truly,

CARY D. LANDIS,
Attorney General.

VOTE—TWO POLL TAX RECEIPTS. NECESSARY

May 28, 1932.

Dear Madam:

Permit me to say paragraph six of Section 248, Compiled General Laws, 1927, provides that a person who has only been a resident of this State one year must first produce a poll tax receipt from the State from which they removed before being permitted to vote.

Anyone having lived in this State but moved from one county to another for a period of more than one year must have paid the two preceding years' poll tax, and must produce receipts to this effect, if he has moved from one county to another.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

POLL TAX RECEIPTS—APPLICATION OF LAW

May 30, 1932.

Dear Madam:

This refers to oral request made by Mr. Sauls, Clerk of the Circuit Court, for an opinion with reference to poll tax receipts.

The law requires that an elector in order to be qualified to vote in the coming June Primary must have paid the two preceding years' poll tax, unless he falls within the exempted classification. Poll tax receipts are required by the law to be dated as of the date when the money is paid, and the date of the poll tax receipt is the concrete evidence of when the poll tax was paid. May 21st was the last day on which poll tax for the year 1931 could be paid, in order to qualify an elector with reference to this year's poll tax. Of course, he must also have paid his poll tax for the year 1930. Any poll tax receipt for the poll tax for 1931 dated after May 21st could not be recognized as a proper payment of poll tax in order to qualify a voter. If for any reason the Tax Collector made a mistake in the date and dated

the receipt after May 21st, when as a matter of fact the poll tax was paid before May 21st, and it was only through error that the date shows to be a date subsequent to May 21st, then the elector should return this receipt to the Tax Collector and have it corrected in accordance with the true facts in the case, but so far as the election officials are concerned, the date of the poll tax receipt must govern.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

REGISTRATION BOOKS—DUTIES OF REGISTRATION OFFICER

June 4, 1932.

Dear Sir:

Replying to your favor of the 1st instant, permit me to say Section 298, Compiled General Laws, requires the Supervisor of Registration to furnish the inspectors of elections of each polling place in each election district, one registration book of each district.

The statute provides that the Supervisor of Registration shall furnish books, and it makes no reference to deputy registration officers. The statute makes no provision for registration books being sealed with paper. However, I am informed that in some counties the books are sealed.

I think if the registration officer seals and signs the registration books in such manner that the seal could not be broken without breaking the signature of the Supervisor of Registration, there would be no legal objection to the books being delivered by deputy registration officers.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTION LAWS—BALLOT NOT PERMITTED TO BE TAKEN TO SICK BED OF VOTER

June 15, 1932.

Dear Sir:

This refers to your favor of the 14th instant, and in reply I would state that it is not permitted under our Election Laws to carry a ballot away from the polls to the bedside of a voter and have him mark it and then carry the ballot back to the polls. The voter must himself, under our law, appear at the polls and cast his own ballot.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REGISTRATION BOOK—COURSE TO PURSUE WHEN LOCKED IN
BALLOT BOX

June 15, 1932.

Dear Sir:

Replying to your favor of the 15th instant, in which you state that the election managers in one of the precincts in your county locked up the registration book in the ballot box with the other returns, and you wish to be advised what should be done in the premises, permit me to say:

The inspectors for the precinct should convene, and in the presence of the county canvassing board unlock the ballot box and remove therefrom the tally book and the registration book. Then relock and reseal the ballot box. It might also be advisable to have a written statement prepared and signed by the inspectors and the members of the county canvassing board stating the reasons for the re-opening of the ballot box and listing the items taken therefrom, and a copy of this statement should also be deposited in the ballot box.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REGISTRATION BOOKS—DATE FOR CLOSING

July 11, 1932.

Dear Sir:

Replying to your favor of the 6th instant, in which you ask to be advised the exact date for closing the registration books prior to the General Election this year, permit me to say if your county is governed by the general law and not by some special act on the subject, then the registration books should be closed as provided by Section 263, Compiled General Laws of 1927, which in part reads as follows:

"The registration books of each county shall be closed on said second Saturday of the month preceding the day in each year in which there shall be a general election."

The Supreme Court has held that this refers to a month of thirty days and not to the calendar month. Therefore, this year the second Saturday of the month preceding the day of the General Election, which is November 8th, would be October 22nd, which is the day on which the registration books should be closed prior to the General Election.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTIONS—IN RE CONTEST

August 2, 1932.

Dear Sir:

Replying to yours of July 29th, permit me to say Sections 439 and 440, Compiled General Laws, require that a person who proposes to contest an election must file a petition in the office of the Clerk of the Circuit Court within 25 days after the canvassing board declares the result of the election. This would appear to bar the right of a candidate to contest the nomination or election, who failed to file his petition within 25 days.

However, the Supreme Court in the case of *State ex rel vs. Haskell*, 72 Fla. 176, said:

"The ministerial duty imposed by law upon precinct election officers to make a correct count of the return of the votes as cast in a primary election held under the statute is a continuing one; and mistakes made by such officers in counting and returning the votes as cast may be corrected in mandamus proceedings duly taken in proper cases."

While the Supreme Court did not say so in plain language, the inference is that upon proper showing in mandamus proceedings, the Court may require the recount and recanvass of the ballots cast in a primary or general election at any time within the discretion of the Court.

Yours very truly,

CARY D. LANDIS,
Attorney General.

GENERAL ELECTION—IN RE PAYMENT OF POLL TAXES, AND
PUBLICATION OF LIST OF VOTERS

August 16, 1932.

Dear Madam:

This refers to your favor of the 15th instant, and in reply I would state that the last day for payment of poll taxes prior to the General Election is October 15th.

In reply to your second inquiry, I beg to advise that Section 284 of the Compiled General Laws requires publication by the Supervisor of Registration of a certified list of the registered and qualified voters within fourteen days after the second Saturday of month preceding day of election, which, in this case, would be not later than October 29th, 1932.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

ELECTORS—IN RE PUBLICATION OF LIST

August 18, 1932.

Dear Sir:

I have your letter of August 15 with reference to publication of list of registered and qualified electors under Section 284, Compiled General Laws of 1927.

Answering your first inquiry, I beg to say that under said statute it appears that you would have authority to designate the paper for publication. In this connection, however, your attention is called to Section 2153 which gives the County Commissioners authority to approve all accounts against the county.

In further answer to your letter, I know of no law to prevent letting of the publication on competitive bids provided the bid accepted is not greater than the statutory legal rate. See Section 4668. In this connection, I may say that letting of contracts for public work on competitive bids is good public policy.

You make further inquiry as to whether it would be unlawful for you to accept pay from the publishers of the paper for preparation of the list. Your attention is called to Section 7473 prohibiting state and county officers being interested in any contract for public work and providing penalties for violations of the statute. Your attention is further called to Section 7486, making it unlawful for any state, county or municipal officer to exact or accept any reward, compensation, or other remuneration other than those provided by law, from any person whatsoever for the performance or violation of any law, rule or regulation that may be incumbent upon the said officer to administer.

Very truly yours,

CARY D. LANDIS,
Attorney General.

REGISTRATION BOOKS—POLL TAXES—TIME FOR CLOSING AND
PAYMENT

August 19, 1932.

Dear Sir:

Replying to yours of the 17th instant, permit me to say Section 263, Compiled General Laws, which is applicable to all counties not governed by a special act, provides that the registration books of each county shall be closed on the second Saturday of the month preceding the day in each year in which there shall be a general election. The second Saturday in the thirty days preceding November 8th this year, which is the day of the General Election, is October 22nd.

Section 248, Compiled General Laws, provides that no person shall be permitted to vote at a General Election who shall have failed to pay at

least on or before the fourth Saturday preceding the day of election his or her poll taxes for the two years next preceding the year in which the election is held. October 15th is the fourth Saturday preceding November 8th, which is the day of the General Election of this year.

It may be that the special act governing the registration of electors in your county fixes a different date for the closing of the registration books from that fixed by Section 263, Compiled General Laws. If so, you should be governed by said special act.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTORS—PUBLICATION OF LIST

September 12, 1932.

Dear Sir:

Replying to yours of September 6, permit me to say Section 284, Compiled General Laws, 1927, requires the Supervisor of Registration to have published within fourteen days after the second Saturday in the month preceding the day of election, a certified list of the qualified electors of each election district wherein an election is held.

Former Attorney General Davis, now a member of the Supreme Court, held that the publication shall be in a newspaper published in the county. I concur in his holding in this respect.

October 22 this year is the second Saturday in the month preceding the day of election. The Supreme Court has held that where a statute reads as this one does that it does not refer to the calendar month but to the thirty days preceding the day of election.

Very truly yours,

CARY D. LANDIS,
Attorney General.

PARTY AFFILIATION—METHOD OF CHANGING

September 14, 1932.

Dear Mrs. Gonzales:

Replying to yours of September 9, permit me to say Section 365, Compiled General Laws, provides that a person may change his party affiliation by applying to the Supervisor of Registration at least sixty days before the date of any general primary. There will not be another general primary election until June of 1934; therefore, any person may change his party affiliation at any time between now and June, 1934.

Of course, I am assuming that the Legislature of 1933 will not change the Election Laws. If any change should be made by the next Legislature affecting this subject, of course, it will be necessary to disregard what has been said herein.

Very truly yours,

CARY D. LANDIS,
Attorney General.

TAX ASSESSORS

MORTGAGE FORECLOSURE—PLATTED LAND RESTORED TO ORIGINAL DESCRIPTION

January 29, 1931.

Dear Sir:

Where a man owns a parcel of land, deeds it to another, but takes back a mortgage for part of the purchase price, and the land is afterwards subdivided by the grantee in the deed without the consent or participation of the mortgagee, and the mortgagee afterwards forecloses on the property without having issued any partial releases with reference to the subdivision, in consequence of which the foreclosure sale and the master's deed describes the property as it originally was described before the subdivision plat was filed, the effect of such proceeding is to legally foreclose against the plat itself, and to restore the land to its original description.

In other words, if land subject to a mortgage has been platted, the foreclosure mortgage has the effect of cancelling the plat where the mortgagee did not participate in the filing of the plat or did not ratify it afterwards.

Yours very truly,

FRED H. DAVIS,
Attorney General.

VETERANS, WORLD WAR—CONSTRUCTION AND DIFFERENTIA- TION OF STATUTES IN RE TAX EXEMPTIONS

February 12, 1931.

Dear Sir:

This answers your letter of February 9th on the above subject.

It must be borne in mind that under Article IX, Section 9 of the Constitution, only those persons who have been "disabled in war" are entitled to a tax exemption on property to the extent of \$500. In a recent court case tried in Tampa, the Circuit Court construed the language "disabled in war" to include any substantial disability incurred in the war, even though it might be as low as ten per cent in some instances, depending on the nature of the disability.

At the same time, there is no authority under the Constitution, and it will be unlawful for Tax Assessors to allow exemptions for disabilities which were not sustained "in war." The Constitution has used the words "in war," and no one except the people of the State voting for a constitutional amendment have the authority to alter the language used. Where improper exemptions are allowed by tax officials, it gives every other tax payer a ground to complain and even to bring law suits based upon such improper allowances. Therefore, the constitutional provision should be administered fairly and impartially in accordance with its interpretation by the courts.

In this connection it is well to state that the government provides disability ratings for many disabilities to former soldiers, which are entirely technical in their nature. While they might be what is declared by Federal law to be "service connected," the Federal law can have no effect to extending tax exemptions under the Florida Constitution to those veterans who would not be entitled to such exemptions, irrespective as to whether the Federal Government ever passed a Federal law or not.

In fact, each case of a claim for property tax exemption asserted under Section 9 of Article IX of the Constitution must be allowed upon the *facts* of the case presented to the tax assessor, irrespective of any technical rating which the Federal Government may have placed on the veteran under a Federal law, concerning pensions, allowances and the like. While such a rating or a certificate of disability received from the Federal Government may furnish evidence upon which the tax assessor may exercise his own independent judgment, at the same time, it is the duty of the tax assessor to investigate every claim for exemption and to determine from the facts presented to him, irrespective of what rating may have been given by the Federal Government to the veteran, whether or not the veteran was in the eyes of the law and the Florida Constitution "disabled in war."

I have suggested to tax assessors that since the Board of County Commissioners have to approve the equalization of the tax roll, and since the allowance of exemptions on the tax roll enter into and have a bearing on the question of equalization, that all of these claims for exemption before they are allowed, together with the evidence supporting the same, be filed with the County Commissioners, and be approved by the commissioners before they are granted by the tax assessor.

I think it is also not only proper but necessary that veterans who claim these exemptions under Section 9 of Article IX be required to furnish supporting evidence in the form of affidavits and other written evidence, which will justify the tax assessor in allowing the exemption claimed. Owing to the present high taxes in Florida, every excuse is being seized upon by large tax payers to bring injunction suits to prevent collection of taxes, usually upon the claim of alleged discrimination either in the allowance of improper exemptions, or in the failure of the tax assessor to place property on the tax books which should be placed there.

Personally, I favor a liberal interpretation of Section 9 of Article IX

of the Constitution with regard to allowing veterans the benefit of every reasonable doubt when they apply for an exemption. But at the same time, the taxing authorities must bear in mind that the allowance of promiscuous exemptions is sure to be made the subject of attack in the courts, and they should fortify themselves against such attack by seeing that every exemption allowed has evidence on file to support it. And as I have pointed out above, it is a pretty good thing to have the exemptions also filed with and approved by the County Commissioners who are the fiscal agents for the county.

The fact that the 1929 law allows a veteran to obtain a free occupational license on any kind of a disability which he now has, has confused the law in the minds of some tax assessors and some veterans, who have not distinguished between the allowance of a property tax exemption and the granting of a free occupational license tax, which is governed by an entirely different law.

In order to be entitled to a property tax exemption, it must be shown that the veteran was "disabled in war," which means that he must have either been wounded, gassed or incurred other disease or injury while in the service, from which he has since been substantially disabled and is still substantially disabled. For example, many soldiers had flu during the war, which often caused them to spend weeks in the hospital and in some instances left them with lung, eye or ear trouble, which has been continuous since the war has ended.

Some veterans I know here have been left more or less deaf. Others have eyes seriously affected. In cases like this the veteran would be clearly entitled to his exemption, because he could trace the same directly back to an illness which he had "in war." But where the veteran was never in the hospital during the war, and so far as his record during the war shows, was never ill during the war or never wounded, gassed or injured, the mere fact that the government now recognizes some ailment as having been technically "service connected" for compensation purposes, does not entitle such veteran to an exemption under the Florida Constitution, although it would entitle him to obtain a free occupational license.

Yours very truly,

FRED H. DAVIS,
Attorney General.

• NATIONAL BANKS—IN RE ASSESSMENT OF PERSONAL
PROPERTY

April 20, 1931.

My Dear Sir:

Replying to yours of the 18th instant relative to the assessment of personal property of National Banks, would state that I do not see how I can make this any plainer than I did to the Honorable Ernest Amos under date of April 14th, 1931, wherein I quoted an opinion rendered by our Supreme

Court in the case of Roberts, County Tax Collector, vs. American National Bank of Pensacola.

You will note in that letter that I stated that the personal property of a National bank, among other things, may be taken in consideration in arriving at the value of the shares for the purpose of taxation, but only the real property and the shares of such banks can be taxed. Our own Supreme Court has stated, as you know, "The personal property of a National Bank is not subject to State or local taxation." I note that you do not agree with this statement of the law, but this office has nothing to do with the enacting of our laws and can only administer them as we find them. This matter has been briefed very thoroughly by this office, and I think the opinion rendered by Mr. Amos is sustained by every authority.

Yours very truly

CARY D. LANDIS,
Attorney General.

TAX ASSESSOR—NOT ENTITLED TO COMMISSION ON EXTRA
WORK

May 18, 1931.

Dear Sir:

Replying to your favor of the 16th instant, in which you request my opinion as to whether or not the County Tax Assessor of your county is entitled to collect from the county the \$485.00 claimed for extra work in extending the millage on the 1930 Tax roll, in compliance with a mandatory decree from the Supreme Court, I beg to advise that I find nothing in the law that would warrant your Board of County Commissioners to pay for this work as extra work.

Your tax assessor's commissions, of course, are increased because of this extension to the extent of this additional mandatory levy, but other than this, I find nothing in the law to warrant any further payments. I realize that under these particular circumstances, the County Tax Assessor was put to some considerable extra labor, yet I can find nothing that would authorize the payment of the bill which you enclosed to me and which I herewith return to you.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BANKS—IN RE TAX ASSESSMENT

June 24, 1931.

Dear Sir:

Replying to yours of the 18th instant in which you ask to be advised as to how to proceed to assess banks of your county and in which you ask to be advised what bonds or securities are exempt from taxation, permit me to say:

As to State banks, (1) the banking house, furniture, fixtures and other real estate owned are assessed separate and apart from the tax of the capital structure. (2) If the assessment is based on the par value of the stock, after deducting the amount invested in the three items above, the remainder may be further reduced by the amount invested in United States Government securities. (3) If the assessment is based on market value, no deduction is allowed for investments in United States Government securities.

The power of the State to tax National banks, or the shares of stock in such banks, is derived from Congress, and the only tax which may be levied against National banks contemplated by the Acts of Congress is taxation on shares of stock and real property, and the shares of stock are assessable not against bank, but the individual owners thereof. Under the Act of Congress, the State is not permitted to tax the personal property, such as furniture and fixtures, of National banks because Congress has not permitted it.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE AUDITOR, ASSISTANT—AUTHORIZED TO REJECT
ITEM IN REPORT TO COUNTY COMMISSIONERS

July 3, 1931.

Dear Sir:

Replying to your favor of the 30th ultimo, in which you ask the question whether or not the Assistant State Auditor has the right to change, lower or reject any item in the report made by you to the Board of County Commissioners where no complaint has been made to the Governor of the State of Florida and no objection has been made by anyone, I would state that the Assistant State Auditor has the right in making the audit of the County Records to change, lower, reject or alter any item in the report that is not made in accordance with the law, and is not authorized by law. It is entirely immaterial that no objection has been made and that the County Commissioners have accepted the report, for the very purpose of the State Auditing System is to see that the reports are made in accordance with the requirement of the law.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CORPORATION—WHEN EXEMPT FROM TAXATION

July 13, 1931.

Dear Sir:

This is in reply to your favor of the 10th instant, relative to the question of exemption of property of "The Little Theatre Holding Corporation" of your city.

It is my opinion that if this property is used solely for literary purposes, and is actually occupied and used by this company for such purpose, then the property is exempt but the statute says: "but property of such institution which is rented wholly or in part and the rents, issues and profits only used by such institution, shall not be exempt from taxation, nor shall any property held by them as an investment or speculation be exempt from taxation." It is, therefore, my opinion that if this property is used solely for literary purposes of the Little Theatre Corporation and is not rented either wholly or in part to any one else, that then this property is subject to exemption under the law.

Very respectfully,

CARY D. LANDIS,
Attorney General.

TAXES—DISCOUNT SHOULD BE ALLOWED UNDER CERTAIN
CONDITIONS

July 16, 1931.

Dear Sir:

This refers to your favor of the 15th instant, in which you ask what would the result be when the State and County millage is not given to the Assessor till September, and in the larger counties where it is impossible for the Assessor to do the amount of work in the time allowed to finish the Tax roll by November first.

Clearly, the result would be that the tax books would not be opened so that the taxpayers could pay their taxes on time, and, unless there is some further legislation enacted, it would be my opinion that any taxpayer who would tender money in payment of taxes, even though the books were not open, would be entitled to the discount allowed for early payment of taxes under the law.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

MUNICIPAL PROPERTY—WHEN NOT EXEMPT FROM STATE
AND COUNTY TAXES

July 21, 1931.

Dear Sir:

Under the provisions of second paragraph of Section 897 of the Compiled General Laws of Florida, 1927, lands sold for municipal taxes and purchased by the municipality are not exempt from State and county taxes.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ASSESSMENT ROLL—CORRECTION OF ERRORS AUTHORIZED

July 21, 1931.

Dear Sir:

This is in response to your request for my opinion as to your authority with reference to errors in taxation and the correction of same under the laws of the State of Florida. Section 894 of the Compiled General Laws, 1927, provides among other things:

"Any such acts of omission or commission may be corrected at any time by the officer or party responsible for same in like manner as is now or may hereafter be provided by law for performing such acts in the first place, and when so corrected they shall be construed as valid ab initio and shall in no way affect any process provided by law for the enforcement of the collection of any such tax."

It is my opinion that this section of our law authorizes the Tax Assessor when he learns of or discovers errors made in the assessment roll, which has been turned over to the County Commissioners for the purpose of equalization, and which has been after approval by the Board of County Commissioners turned over to the Tax Collector with the proper warrant of law for collection attached, to file at any time a supplemental sheet showing the correction of such errors as he may have discovered. It is my opinion that this supplemental sheet correcting these errors should be made in triplicate, and one copy filed with the Tax Collector, one with the State Comptroller and one with the Clerk of the Circuit Court, and upon this being done and the warrant of the Tax Assessor attached thereto, it is my opinion, that as to any such reductions by virtue of such errors or omissions, the Tax Collector should be guided and controlled in making his collections.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

TAX EXEMPTIONS—IN RE WAR VETERANS, DISABLED PERSONS AND DEPENDENTS

August 11, 1931.

Dear Sir:

Replying to your favor of the 10th instant, in which you state that you have had correspondence with the Comptroller's office regarding tax exemptions to which War Veterans and persons disabled are entitled, permit me to say that we do not know that we can make the provisions of Chapter 13876, Acts of 1929 any clearer than they appear to be made in the pamphlet which you returned with the correspondence from the Comptroller's office.

If you will refer to page 7 of the pamphlet you will find that former Attorney General Davis explained the real and personal property exemption to which the head of a family is entitled under Section 9 of Article IX of the Constitution.

We note that you ask the Comptroller what constitutes a dependent family, and at what age children cease to be classed as dependents. In this connection we would state that a widow having a dependent family is one having children or other relatives dependent upon her income or bounty for support. We do not think that age has anything whatever to do with the question of dependence. A person might be independent at an early age, and another person might be dependent at any age, depending upon the circumstances and the physical and mental condition of the individual.

Replying to your second question propounded to the Comptroller in which you ask to be advised what is meant by "disabled in war or by misfortune," we construe that provision to mean a person who has lost a limb as a result of service in the war, or whose health at the time of discharge was such as to render him disabled or who later became disabled because of injury received in the war, or a person who has been disabled by some accident, whether the accident occurred in war service or not.

We note that you ask whether or not old age with consequent disabilities is a ground for exemption, and in reply to this would state that we do not think that disability from old age should be construed as a ground for exemption if the person is financially able to pay, however, if a person is impoverished and has become disabled because of old age, we see no reason why, in the discretion of the Tax Assessor, such person could not receive the exemption.

We note that you also ask the Comptroller whether or not a war veteran is entitled to exemption on the ground that he is receiving a pension on a disability claim, permit me to say the exemption extended to veterans because of disability claims extends to occupational license tax, as set forth in the pamphlet which you enclosed, and it does not mean that a person is entitled to exemption from the payment of real and personal property taxes. In the nature of things the Tax Assessor must necessarily use his discretion in dealing with each and every individual case, as the law is general and does not cover every contingency.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BUSSES AND TRUCKS—CONSTITUTION PROHIBITS LEVYING AD VALOREM TAX

August 20, 1931.

Dear Sir:

Replying to your favor of the 15th instant, addressed to Hon. Ernest Amos, State Comptroller, in which you ask to be advised whether or not busses and trucks used as public carriers should be assessed for taxes,

permit me to say the Constitution prohibits the levying of an ad valorem tax on motor vehicles, including busses and trucks. The license tag provided for by statute is in lieu of the ad valorem tax heretofore assessed against motor vehicles.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INTANGIBLE PERSONAL PROPERTY—CLASSIFICATION FOR TAXATION

September 2, 1931.

Dear Sir:

Replying to your favor of the 27th ultimo, in which you ask my advice regarding the assessment of personal property in your county, permit me to say House Bill No. 30-XX, adopted at the last session of the Legislature, defines and classifies intangible personal property for the purpose of taxation.

Section 3, paragraph 1, defines class A intangible property as being all stocks or shares of incorporated or unincorporated companies, all bonds except bonds of the several municipalities and counties of the State of Florida, and also such bonds or governmental bonds as may be exempt from taxation under the Constitution or laws of the United States or the State of Florida.

Paragraph 2 defines class B intangible personal property as all notes, bonds and other obligations for the payment of money which are secured by mortgage, deed of trust, or other leases or liens upon real or personal estates situated in Florida, and the same section contains the proviso that only that part of the value of the mortgage, deed of trust, lease or other lien, the property of which is located within the State, which bear to the whole value of the property described in said obligation shall be classified and known as class B intangible personal property.

Section 7 of the Act reads as follows:

"The taxable value of all intangible personal property which is assessed on said tax roll shall be on the same basis of valuation as is used for the assessment for taxation of real or personal property."

It is my opinion that all stocks and all bonds except bonds of the several municipalities and counties of the State of Florida and also such bonds or governmental bonds as may be exempt from taxation under the Constitution or laws of the United States or the State of Florida should be taxed as intangible personal property.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WIDOWS' EXEMPTION—WHEN NOT ENTITLED TO

October 29, 1931.

Dear Sir:

I am in receipt of your letter of the 22nd instant, quoting Section 9 of Article IX of the State Constitution and Section 897, Compiled General Laws of Florida, 1927, with reference to exemptions to widows. I note your inquiry as to whether or not a widow is entitled to this exemption for any year when she was not such a widow on January 1st of said year.

Answering your inquiry, I find that Section 913, Compiled General Laws of Florida, 1927, requires the Tax Assessor to make assessments as of the first day of January. I find also that neither of the above quoted Sections of the Constitution and Compiled General Laws appear to expressly provide for such exemptions to widows when they were not such a widow on January 1st. I find also that our Supreme Court in the case of *Rast vs. Hulvey*, 77 Fla. 74, 80 So. 754, held as follows:

"All laws exempting property from taxation should receive a strict construction, and no property should be held to be within the exemption, unless it is clearly within the terms of the statute granting immunity from taxation."

In consideration of the above, I do not think the widow, unless she was such a widow on the first day of January, would be exempt.

Yours very truly,

CARY D. LANDIS,
Attorney General.

VETERANS, WORLD WAR—HOW TAX EXEMPTION MAY BE ALLOWED

November 5, 1931.

Dear Sir:

Replying to your favor of October 29th, in which you state that a World War Veteran, who is entitled to property tax exemption, owns a piece of property jointly with his brother, and in which you ask to be advised how the undivided interest of the war veteran could be exempted from taxation, permit me to say we note that you state that the property is in fact owned wholly by the war veteran but for certain reasons the title is in the name of himself and brother jointly.

It seems to me that the simplest solution to this problem would be for the brother, who does not in fact own an interest in the property, to make a conveyance to his brother, who does in fact own the property.

In those cases where assessments are made against war veterans without allowing them exemption, which they might be entitled to under Section 9 of Article IX of the Constitution, the proper procedure is to establish his right to such exemption by making affidavit of claim for the same

before the tax collector. If the tax collector is satisfied as to the claim, he should allow it and present it to the County Commissioners, who are authorized to approve the same, after which the tax collector can credit the same on his error and solvency list, inasmuch as the tax collector is charged with the amount of taxes assessed on the books. He is not authorized to allow the exemption without first obtaining the approval of the County Commissioners.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

TAXES, SPECIAL—COMMISSION ALLOWED WHEN COLLECTED

November 9, 1931.

Dear Sir:

This refers to your favor of November 6th, and in reply I beg to advise that it is my opinion that under House Bill No. 24-X allowing Tax Assessors a commission for assessing special taxes that you will as Tax Assessor be entitled to your commission out of and from the special taxes or special tax district taxes as and when collected from and after the date when the Bill became a law, to-wit: June 26th, 1931.

Very respectfully,

CARY D. LANDIS,
Attorney General.

RACE HORSES—WHEN NOT SUBJECT TO TAXATION

November 9, 1931.

Dear Sir:

This refers to your favor of the 5th instant, relative to taxation of horses brought into the State for racing purposes and then carried out again.

I know of no theory on which you would be able legally to tax those horses. Of course if the owner of those horses is a permanent resident and domiciled in Florida then such personal property would be taxable to such owner, but where a northern man brings a horse into the State simply to race him and then takes him on to another State, etc., I know of no legal way in which a tax could be levied on a horse under these circumstances.

Very respectfully,

CARY D. LANDIS,
Attorney General.

VETERANS, WORLD WAR—NOT EXEMPT FROM TAXATION ON
PROPERTY PURCHASED WITH MONEY PAID BY U. S.
GOVERNMENT

November 10, 1931.

Dear Sir:

Replying to your favor of the 3rd instant, with which you referred an attached communication from Hon. George W. Burke, Regional Attorney of the Veterans' Bureau of Jacksonville, Florida, on the question of whether or not real estate purchased with moneys paid by the United States Government to a World War Veteran should be held to be exempt from State and county taxation, permit me to say:

Hon. Fred H. Davis, former Attorney General, now a member of the Florida Supreme Court, under date of May 19, 1930, rendered an opinion on this subject, in which is contained the following paragraph:

"Unquestionably, the funds which constitute the estate of a deceased World War Veteran received from the United States Government are exempt from taxation by the State. But we do not think such exemption can be followed into the land purchased with such funds, which is more than a mere change in the form of the estate. If such theory could be maintained, then the salary of the Federal Judge, which is exempt from taxation by the State, would render exempt his home owned in the State of Florida, which was paid for with such salary. The same would be true of postmasters, and the thousands of other Federal employees who receive United States Government funds which are invested in various kinds of taxable property. I am therefore of the opinion that the exemption cannot be allowed."

The Federal statute governing World War Veterans compensation provides that the "compensation, insurance, and maintenance and support allowance payable under parts 2, 3, and 4 respectfully, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under parts 2, 3, and 4, and shall be exempt from all taxation."

We construe this to mean that the compensation itself shall be exempt from all taxation, but that the exemption does not follow into real estate or personal property purchased with such funds.

We have read the decision of the Supreme Court of the State of Georgia holding to the contrary, but until the Supreme Court of Florida, or the Supreme Court of the United States, renders an opinion that real or personal property purchased from the proceeds of veterans compensation is exempt from State and county taxation, we do not feel disposed to reverse the opinion heretofore rendered by former Attorney General Davis.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

MUNICIPAL CORPORATION—AUTHORITY GRANTED TO ABOLISH OFFICE OF TAX COLLECTOR

November 19, 1931.

Dear Sir:

Replying to your favor of the 13th instant, permit me to say:

Chapter 15047, Acts of 1931, provides that the governing authority of each municipal corporation in this State is authorized to abolish by ordinance the office of tax assessor, and to provide for the performance of the duties of such office by the tax collector of said municipal corporation.

The Chapter referred to above repeals all laws and parts of laws in conflict with the Act, and takes effect January 1st, 1932.

In view of these provisions, it appears that any time after January 1st, 1932, the governing authority of the City of Fort Myers is authorized by ordinance to abolish the office of tax assessor, irrespective of the fact that the incumbent may have been elected for a longer term.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WIDOWS—NO LEGAL OBJECTION TO APPLYING TAX EXEMPTION TO UNDIVIDED INTEREST IN REAL ESTATE

December 10, 1931.

Dear Sir:

Replying to your favor of the 7th instant, in which you ask my opinion as to whether or not the widows' constitutional exemption of \$500.00 would apply in the case of a widow who has an undivided one-third interest in real estate, permit me to say:

If there is any method by which the assessment can be properly made as to the other two-thirds, I can see no legal objection to applying the exemption to the widows undivided one-third interest.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX EXEMPTION, WIDOW'S—DIVORCED WOMAN NOT ENTITLED TO

December 30, 1931.

Dear Sir:

Replying to your favor of the 21st instant, in which you ask to be advised if a woman whose husband has died would be entitled to widows' exemption after having married and been divorced from a second husband,

permit me to say it is my opinion that such person would not be entitled to the widows' exemption, because her second marriage would change her status from that of a widow to that of a married woman having a living husband. A divorce does not make her in contemplation of law a widow.

Very truly yours,

CARY D. LANDIS,
Attorney General.

INTANGIBLE PERSONAL PROPERTY TAX—APPLICATION OF LAW IN RE BONDS, MORTGAGES, STOCKS AND SECURITIES

January 1, 1932.

Dear Sir:

Replying to your favor of the 23rd instant, in which you ask to be advised whether the stock of a corporation is subject to the Intangible Tax, where the corporation has been formed to hold property for the purpose of selling land, permit me to say it is my opinion that such stock under the statute is intangible personal property and should be taxed as such.

Where a person maintains a winter home and votes in Florida and holds mortgages in Florida, but has his office in another State, it is my opinion that such mortgages are subject to taxation as intangible personal property.

With reference to your question as to whether a citizen and resident of Florida having bonds and securities in another State and paying taxes in the other State should be taxed on those securities in Florida, permit me to say I am of the opinion that such person should be required to pay the tax. Otherwise, a citizen of Florida could defeat the purpose of the Act by keeping his intangible personal property in some other State.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INTANGIBLE PERSONAL PROPERTY TAX—CLASSIFICATION

January 7 1932.

Dear Sir:

Replying to your favor of the 31st ultimo, permit me to say:

The tax provided by Chapter 15789 on intangible personal property is the only tax that may be levied on such property, and it is exclusive of all other State, county and municipal tax. Such property should not be listed on any tax roll except that provided for the assessment of intangible personal property, and the rate of taxation is prescribed in the Act under classes A, B and C.

Section 1 of Article IX of the Constitution authorizes the Legislature to apportion the intangible personal property tax, but the Legislature has not seen fit to do so.

Yours very truly,

CARY D. LANDIS,
Attorney General.

VETERANS—WHEN ENTITLED TO TAX EXEMPTIONS

January 27, 1932.

Dear Sir:

Replying to your favor of the 23rd instant, in which you make inquiry regarding disability exemptions to War Veterans, permit me to say a Veteran may be entitled to engage in business without paying a license because he is disabled at the present time, but he would not be entitled to a real or personal property exemption of \$500.00 unless he was disabled in the war or has had an accident since the war which has made him a cripple or caused him to lose a limb.

As to the exemption provided for by Section 9 of Article IX of the Constitution of the State of Florida, which is the organic provision providing for real or personal property exemption, it makes no difference what the disability rating of the veteran may be, unless he was disabled in the war or has had an accident since the war, which has made him a cripple or has caused him to lose a limb, he would not be entitled to the real or personal property exemption of \$500.00.

It is largely up to the Tax Assessors to determine from the proof submitted whether or not a veteran was *actually disabled in the war*. Of course where a veteran lost a limb or has met with an accident since the war which has made him a cripple proof of such fact should not be difficult.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INTANGIBLE PERSONAL PROPERTY—ASSESSMENT OF

January 8, 1932.

Replying to your favor of the 6th instant, permit me to say that the statute providing for a tax on intangible personal property requires persons owning or controlling such property to make a return to the tax assessor. The statute authorizes the tax assessor to accept the valuations stated by the person making the return, or to increase the valuations as in his judgment such should be done.

I am under the impression that the tax assessors of the State are going to make the assessments from the returns, and are not going to attempt to assess intangible personal property unless a return thereof is made.

In reply to your second question, permit me to say that the statute defines intangible personal property, and stocks of merchandise are not included in the definition and are not intangible personal property. The tax assessors will continue to assess tangible personal property just as they have done heretofore. The purpose of the Act levying a tax upon intangible personal property is to make it possible to tax a class of property which has not heretofore been taxed.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CANDIDATE—FEES SHOULD BE BASED ON NET AMOUNT OF
COMPENSATION

January 30, 1932.

Dear Sir:

Replying to your favor of the 27th instant, relative to certifying the amount of salary or compensation in order to arrive at the amount to be paid the county to qualify as a candidate, permit me to say the fees should be based on the net and not the gross amount of compensation.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CITY PROPERTY—WHEN EXEMPT FROM TAXATION

February 25, 1932.

Dear Sir:

This refers to your favor of the 23rd instant, making inquiry relative to the taxation of property held by cities.

It is my opinion that all property owned and held by cities or municipalities which is in some form or manner used for a city purpose, then this property should not be taxed but if the property is not being used for such public city purpose, then the property would be subject to State and County taxes. In other words, if the property is used as a public park, or for the purpose of the Fire Department or for any of the various duties and functions which the city performs for its citizenship, then this property would be exempt, otherwise, it would not be exempt from State and County taxes.

Very respectfully,

CARY D. LANDIS,
Attorney General.

SPECIAL ROAD AND BRIDGE DISTRICT—CERTAIN COMMISSION ALLOWED FOR ASSESSING TAXES

February 26, 1932.

Dear Sir:

Replying to your favor of the 22nd instant, relative to the commission to which you are entitled under Chapter 15663, Acts of 1931, permit me to say:

The last Federal Census gives Levy County a population of 12,456. The Chapter above referred to provides that in counties of not less than 12,400 and not more than 12,500 the Tax Assessor shall be paid 1½% for assessing special taxes and special tax district taxes. You will, therefore, see that you are entitled to 1½% and not 2% commission for assessing road bond taxes for the various road districts in your county.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

INTANGIBLE PERSONAL PROPERTY—CONSTITUTION PROHIBITS MUNICIPALITIES FROM ASSESSING

February 29, 1932.

Dear Sir:

Replying to your favor of the 25th instant, in which you ask to be advised whether or not municipalities of the State may make assessments for intangible personal property, permit me to say the Constitution of the State prohibits municipalities doing so.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX ROLLS—COMMISSION NOT ALLOWED FOR ENTERING PROPERTY SOLD TO STATE

March 2, 1932.

Dear Sir:

Replying to your favor of the 20th instant, relative to whether or not the tax assessor is entitled to compensation for entering property sold to the State on the tax rolls, permit me to say the statute only provides a commission for the assessment of taxes, and where the statute requires a public officer to perform a duty and provides no compensation therefor, the Supreme Court has held that the officer is required to perform the duty gratuitously.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INTANGIBLE PERSONAL PROPERTY TAX—CONSTRUCTION
OF ACT

March 2, 1932.

Dear Sir:

Replying to your favor of the 27th instant, permit me to say that under the intangible personal property tax Act, bills receivable come under class "C" and the values of same should be estimated by the person to whom the said bills are payable, to the best of their knowledge and belief.

Building and loan associations are subject to the provisions of the intangible personal property tax Act, the same as banks and other corporations.

Yours very truly,

CARY D. LANDIS,
Attorney General.YALE UNIVERSITY—PROPERTY OWNED IN STATE NOT EX-
EMPT FROM TAXATION

March 16, 1932

Dear Sir:

I am in receipt of your letter of March 3, enclosing a letter from Thomas W. Farnham, Assistant Treasurer and Comptroller of Yale University, seeking exemption from taxation for one hundred eighty-two acres of land in Clay County owned by Yale University, and used in connection with anthropoid experiment station, and requesting my opinion as to whether the said property should be exempted.

In reply to your inquiry, I beg to refer you to Section 897 of the Compiled General Laws of 1927 with reference to property of educational and other institutions. This section provides for an exemption from taxation of "such property of education, literary, benevolent, charitable and scientific institutions *within this State* as shall actually be occupied and used by them solely for the purpose for which they have been or may be organized, but property of such institutions which is rented wholly or in part and the rents, issues and profits only used by such institutions shall not be exempt from taxation, nor shall any property held by them as an investment or for speculation be exempt from taxation."

You will note that the above statute refers only to educational and other institutions *within this State*; and, therefore, could not apply to lands owned by Yale University, or any similar institution of another State.

Under the ruling of our Supreme Court, tax exemption laws must receive a strict construction and I cannot construe the above exemption statute to apply to lands owned by an out of State institution.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

INTANGIBLE PERSONAL PROPERTY TAX—CONSTRUCTION
OF ACT

March 22, 1932.

Dear Sir:

I am in receipt of your letter of the 7th instant, making inquiry with reference to Chapter 15789, Laws of Florida, Acts of 1931.

Your first inquiry is whether or not bonds of other states or the taxing districts of other states are exempt under our law with reference to intangible personal property.

In answer to this question I beg to say that in my opinion such intangible personal property is taxable in this State if owned by a party who has his domicile here.

Your next question is whether real estate mortgage bonds owned by a Florida citizen but secured by real estate located in another State, should be listed under classification "B" or "C."

In answer to this question I beg to say that in my opinion it would come under Class "C."

Yours very truly,

CARY D. LANDIS,
Attorney General.

COLLEGE PROPERTY—WHEN NOT EXEMPT FROM TAXATION

March 30, 1932.

Dear Sir:

This refers to your favor of the 28th instant, enclosing copy of letter from Mr. W. R. O'Neal, Secretary of Rollins College.

He states that Rollins College owns certain vacant lots in Winter Park. They are not a part of the College property and they are not now used for school purposes. Upon this statement of facts it is my opinion that these lots are not exempt from taxation. The statute makes applicable the exemption of property belonging to educational, literary, benevolent, charitable and scientific institutions within this State *as shall be actually occupied and used by them, solely for which they may have been or must be organized*, etc. It therefore seems plain that only such lots as are actually used by the College for educational purposes are exempt from taxation, and as these lots do not appear to be, they should be taxed the same as any private property.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

AUTOMOBILES—WHEN ASSESSABLE AS PERSONAL PROPERTY

April 1, 1932.

Dear Sir:

This is in answer to your question as to whether or not a stock of automobiles in a storeroom on January first of the year is assessable as so much personal property.

I am assuming that these automobiles are in stock without license tags attached. It is my opinion that automobiles of this class and character are assessable the same as any other stock in any kind of store. Of course, if they have upon them the lawful license tags, then they are not taxable, because under the Constitutional Amendment, Article 9, Section 13, the license tax paid for the license tag is in lieu of all ad valorem tax assessable against all motor vehicles as personal property.

The Legislature has defined a motor vehicle as motorcycles, motor trucks, tractors, and all other vehicles *operated over the public streets and highways of this State, and propelled by power other than muscular power*, except traction engines, road rollers, and such vehicles as run only upon a track.

This definition of motor vehicles applies only to those vehicles that are in use on the streets and highways, and not where they are kept in storage as a part of the stock for sale.

It is my opinion that the word "motorvehicle" used in Section 13, Article 9, of the Constitution has the same meaning. Thus it is that I am of the opinion that stocks of automobiles in storerooms, not having lawful license tags and not being operated on the streets and highways, are assessable just the same as any other property.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

OFFICE EXPENSE—ITEMIZED STATEMENT REQUIRED

April 27, 1932.

Dear Sir:

This refers to your letter of April 25th, relative to the requirements of Chapter 14502, Acts of 1929.

It is my opinion that this Act requires that you file with the Board of County Commissioners in sworn *itemized statement*, showing the expense of the office, and as the act says *show for what all moneys are paid out*. I do not think you would be complying with the law to pay one man a salary and let him, out of the salary, pay for the various expense of the office. It is my opinion that the Legislature intended that each public officer should make these itemized statements showing for what all moneys are

expended. It is true that this may require more bookkeeping but evidently the Legislature intended that this should be done in order that the public might see just what has become of their tax money through each of the various public offices of the State.

Very truly yours,

CARY D. LANDIS,
Attorney General.

PARTY AFFILIATION—REQUIREMENT FOR CHANGING

April 20, 1932.

Dear Sir:

Replying to your favor of the 15th instant, in which you ask to be advised whether or not a person may change his political affiliation less than 60 days before the primary election, permit me to say that a person must have applied to the registration officer for change of party affiliation not later than midnight of April 8th, 1932, and this applies to all counties regardless of whether there is a biennial registration required or not.

Yours very truly,

CARY D. LANDIS,
Attorney General.

NURSERY STOCK—ASSESSED AS PERSONAL PROPERTY

May 14, 1932.

Dear Sir:

This refers to your favor of the 11th instant, in which you state that you are assessing the nursery stock as personal property.

I think this is a correct assessment. It is my opinion that the nursery stock as such, even though it is in the ground, is personal property, for the reason that it was planted, nurtured and developed with the sole idea of selling and removing it. This would be my opinion, at least, until a court of competent jurisdiction held to the contrary.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX EXEMPTION—WHO ENTITLED TO

June 12, 1931.

Dear Sir:

Replying to yours of the 11th instant, in which you request an opinion from this office regarding exemptions provided for under the law to be allowed veterans of the Spanish American and World Wars, permit me to say Article IX Section 9 of the Constitution of the State of Florida reads as follows:

"There shall be exempt from taxation property to the value of \$500.00 to every widow that has a family dependent on her for support or to every person who is a bona fide resident of the State and has lost a limb or has been disabled by war or by misfortune."

Permit me to say that we construe the constitutional provision quoted above to mean that every widow who has a family dependent on her for support is entitled to the exemption of \$500.00, and every person who is a bona fide resident of the State and has lost a limb or been disabled in war or by misfortune to the extent that they are unable to perform manual labor or engage in the practice of a profession or manage or conduct a business is entitled also to the exemption. We do not construe the provision of the Constitution to mean that one who might have been slightly disabled and who has since recovered, or who may continue to be slightly disabled but not disabled to the extent that they can not engage in any remunerative occupation, to be entitled to the exemption.

Yours very truly,

CARY D. LANDIS,
Attorney General.

HOMESTEAD—TAX DEED MAY BE ISSUED

May 18, 1932.

Dear Sir:

I am in receipt of your letter of May 11, in which you advise that the tax collector of your county, on July 7, 1930, sold to an individual tax certificate No. 705, representing the delinquent 1929 tax on property owned as a homestead, and that the owner has paid subsequent, 1930 and 1931, taxes. You make inquiry since the property is a homestead, can a tax deed issue thereon after July 7, 1932.

In reply, I beg to say that Chapter 1571, Acts 1931, providing for the redemption of tax certificates by installments, specifically provides in Section 5 thereof, "When any tax lien or certificate is privately owned, then any right of installment redemption thereof at any time shall be conditioned upon and subject to the consent of the holder thereof." In such situation, I see no reason why a tax deed may not issue after two years from the date thereof, provided the same shall not be redeemed prior thereto.

Under the provisions of Chapter 15053 of 1931, it is provided "that no suit shall be brought on any tax sales certificate on any homestead until after the expiration of four years from the date of such certificate." This inhibition, however, against foreclosure suit does not serve to prevent the issue of tax deed otherwise provided for.

Very truly yours,

CARY D. LANDIS,
Attorney General.

TAX CERTIFICATES—NOT TAXABLE UNDER INTANGIBLE
TAX LAW

May 24, 1932.

Dear Sir:

This refers to your favor of the 23rd instant, in which you ask the question whether or not tax certificates for State and County taxes held by an individual are taxable under the intangible law.

It is my opinion that tax certificates held by an individual are on a par with county, municipal, Road Districts, School Districts, Drainage Districts and Inlet District bonds and are not subject to taxation under the Intangible Tax Act of 1931.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

AEROPLANES—SUBJECT TO AD VALOREM TAX

May 30, 1932.

Dear Sir:

This refers to your favor of the 27th inst., in which you make inquiry as to whether or not in my opinion aeroplanes are motor vehicles within the contemplation of Section 13 of Article IX of the State Constitution.

It is my opinion that aeroplanes do not come within the term "motor vehicle" as used in Section 13 of Article IX of the Constitution and, therefore, it is my opinion further that aeroplanes are subject to the ad valorem tax, the same as all other personal property, except motor vehicles. The Legislature of the State has for the purpose of legislation defined the term "motor vehicle" to include all motorcycles, automobiles, motor trucks and all other motor vehicles operated over the public streets and highways of the State. It seems to me clear that the Legislature and the people of the State in amending our State Constitution by adding Section 13 to Article IX of the Constitution had in mind only those motor vehicles that are propelled on and over the highways.

Yours very truly,

CARY D. LANDIS,
Attorney General.INTANGIBLE PERSONAL PROPERTY—COMMISSION ALLOWED
FOR ASSESSING

July 19, 1932.

Dear Sir:

Answering your inquiry of the 12th instant, I beg to say that in my opinion Tax Assessors are entitled to their commissions under Section 1028, Compiled General Laws of 1927, for assessing intangible personal property

under Chapter 15789, Acts of 1931, along with other assessments of real and personal property.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY COMMISSIONERS—AUTHORITY TO REDUCE
VALUATIONS OF LANDS

August 4, 1932.

Dear Sir:

This acknowledges receipt of excerpt from the County Commissioner's Minute Book No. 6, Page 384, which is stated to be as follows:

"Motion made and carried that board reduce valuation on all lands assessed at \$2.00 per acre and up 50c per acre."

The question is whether or not the County Commissioners have the power to assess lands. I would state that, in my opinion, they have no power of assessing lands or property, and that this motion is a violation of the law. In other words, the County Commissioners have no right or authority to order you to make any particular assessment. The duty of assessing lands rests upon the Tax Assessor. The only powers the County Commissioners have in this regard are as set forth in Section 929 of the Compiled General Laws, 1927, which provides that they shall sit as a Board of Equalization for the purpose of perfecting, reviewing and equalizing the assessment; and Section 931 of the Compiled General Laws, 1927, sets forth that the County Commissioners shall have full powers to equalize the assessment of the real estate or personal property in their respective county, and for that purpose may raise or lower the value fixed by the County Assessor of taxes on any *particular piece of real estate* or item of personal property.

The Supreme Court of Florida in the case of Sparkman, Assessor, vs. State, ex rel, reported in 71 Fla. 233, says:

"The County Commissioners have no general power in making tax assessments, but only such special limited power as is specifically conferred by statutes to secure equalization of tax values."

Such a motion as above set forth making a flat reduction in valuation on all lands is, in my opinion, not a matter of equalization but a matter of assessment, and is beyond and outside the authority of the Board of County Commissioners as provided by law.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

TAX SALE CERTIFICATES—COMMISSION FOR EXTENDING
TAXES AFTER REDEMPTION

October 14, 1932.

Dear Sir:

Section 984 of the Compiled General Laws of Florida, 1927, as amended by Section 1 of Chapter 15055, Acts of 1931, authorizes the redemption of tax sales certificates when application is made therefor, prior to November 1st of any year, without payment of the taxes for the year in which such redemption is made.

In case of redemption prior to November 1st of any year, if such redemption is made before the completion of the tax rolls for that year, it is made the duty of the Tax Assessor to extend the taxes for that year. In such event, the Tax Assessor is entitled to his commission for assessing such taxes to the same extent that he is entitled to commission for assessing other taxes for that year.

In other words, if under the law he would have been entitled to a commission for assessing such taxes, had there been no outstanding certificate, he would also be entitled to his commission for extending the taxes after redemption and before the completion of the assessment roll for the particular year.

Yours very truly,

H. E. CARTER,
Assistant Attorney General.INTANGIBLE PERSONAL PROPERTY—COMMISSIONS ALLOWED
FOR ASSESSING SAME AS FOR OTHER TAX

October 26, 1932.

Dear Sir:

I am in receipt of your letter of October 25, relative to the intangible tax provided for under Chapter 15789, Acts of 1931.

In reply to your inquiry as to whether or not the tax is a State or County tax, I call your attention to Section 12 of the Act which provides a definite millage, and also provides that taxes collected shall be paid into the General Revenue Fund of the State of Florida. I also call your attention to Section 20 of the act providing that the taxes collected shall be remitted by the Tax Collector to the Comptroller of the State and by him paid into the Treasury of the State to become a part of the General Revenue Fund of the State. From the above it appears that this is a State tax.

Further answering your inquiry, I beg to say that it appears that the Tax Assessor is entitled to the same commissions for assessment of this property as for any other property. See Section 1028, Compiled General Laws of 1927.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES—APPLICATION OF LAW

November 8, 1932.

Dear Sir:

On October 22, 1932, I addressed a communication to Honorable Ernest Amos, expressing my opinion as to tax assessors' commissions withheld under Sections 1030 and 1031, Compiled General Laws of Florida, 1927. I reached my conclusion in the matter after thorough consideration, which was based to a large extent on a recent opinion of the Supreme Court of Florida in the case of *Martin vs. Karel*, Sheriff of Orange County.

On October 5, 1932, I gave the Comptroller an opinion with reference to the fees earned by an officer, but withheld until the happening of some future event, in which I expressed the view to which I adhere that such fees follow the office.

The Legislature in 1931 by Section 1 of Chapter 15792 fixed the compensation of the County Assessor of taxes and County Tax Collector in counties having a population of not less than 9,400 and not more than 9,410 according to the Federal Census of 1930 on a percentage basis. Section 2, however, of the same Act provides that in event the commissions allowed and received shall not amount in the aggregate to the sum of \$2,400, the County Commissioners shall allow and pay to the Assessor and Collector from the General Revenue Fund of the county the difference between the aggregate amount so received and \$2,400, to the end that the Assessor and Collector shall receive not less than \$2,400 per annum. This has the effect of guaranteeing to the Assessor and Collector a fixed salary of \$2,400 per annum, provided the said Act is constitutional, as to which I express no opinion. If the Act is constitutional (and I might say that the administrative officers of the county have the right to assume that it is until the court holds to the contrary), then you would be entitled to compensation under said Act from its effective date up to the end of your term of office of not less than \$2,400 per annum.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX ASSESSMENT ROLL—DUTY OF ASSESSOR AND COUNTY COMMISSIONERS

November 12, 1932.

Dear Madam:

Replying to your favor of the 7th instant, permit me to say I know of no statute which would authorize you to withhold the tax assessment roll for 1932 until the Tax Collector submits the error and insolvency list for the years of 1930 and 1931.

Section 934, Compiled General Laws, requires that the tax roll be turned over to the Board of County Commissioners on the first Monday in October

for correction, and that the County Commissioners and the Tax Assessor shall meet from day to day until the corrections are made, whereupon the County Commissioners are required to certify to the correctness of the tax roll and the Tax Assessor is required to issue and annex to one of the books the warrant prescribed by Section 942, and deliver the same to the Tax Collector.

While the statute does not expressly require it, it is customary for the tax roll to be in the Collector's office by the first of November.

With reference to your second question, permit me to say the 1931 Act of the Legislature requires the Tax Assessor to assess all intangible personal property. Therefore, I cannot advise you to refuse to assess intangible personal property, even though your Board of County Commissioners has advised you to ignore the law in this respect.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COMMISSIONS—WHEN ENTITLED TO PAYMENT

December 16, 1932.

Dear Sir:

Replying to yours of December 14th, permit me to say Tax Assessors' commissions are paid as follows:

One-fourth April first; one-fourth July first, and the balance when the tax books are delivered, except that one-fifth is held for final settlement of the Tax Collectors, or until the list of errors and insolvencies are filed.

You ask to be advised whether or not Tax Assessors are entitled to monthly payments for commissions on railroad, telegraph and utilities. In reply to your question, permit me to say Tax Assessors receive the commissions as stated above on such utilities, provided the same are paid, but do not receive commissions on such assessments only and until the same are paid.

Very truly yours,

CARY D. LANDIS,
Attorney General.

TAX COLLECTORS

SOLDIERS, ARMY AND NAVY, MEMBERS IMMIGRATION PATROL WHEN SUBJECT TO PERSONAL TAX ON AUTOMOBILES

January 19, 1931.

Dear Sir:

This is in answer to your letter of January 9th on the above subject.

Section 893, Compiled General Laws, defines personal property subject to taxation as being "all personal property belonging to persons residing in this State, not hereby exempt therefrom."

An enlisted soldier in the Army or Navy as well as an enlisted man in the Federal Immigration Patrol, is not considered as residing in Florida merely because he is temporarily stationed here, because he is subject to be moved on orders to any part of the United States at any time without his consent and without notice. Therefore, it cannot be said that insofar as personal property taxes are concerned that automobiles owned by such enlisted soldiers in the Army and Navy or enlisted members of the Immigration Patrol are subject to taxation in Florida.

Of course, if a man is a citizen and resident of Florida his citizenship and residence here render him subject to taxation on his property in this State, and the mere fact that he has joined the Army or Navy or procured a job with the Immigration Patrol will not exempt him. In short, the question is decided not on a question of exemption, but rather on the question of residence for taxation purposes.

Yours very truly,

FRED H. DAVIS,
Attorney General.

RESTAURANTS, CAFES, ETC.—CONSTRUCTION OF LAW IN RE LICENSE TAX

January 28, 1931.

Dear Sir:

Section 1236, Compiled General Laws, reads as follows:

"Owners or managers of restaurants, cafes and public eating saloons shall pay a license tax as follows:

"With seats and accommodations for fifteen or more persons, shall pay a license tax of \$10.00.

"With seats or accommodations for less than fifteen persons, shall pay a license tax of \$5.00."

In addition to the foregoing amounts there is a fifty percent surcharge of the above amounts which is to be collected as a county tax. The statute contains no exemption in favor of restaurants or cafes operated by fraternal or civic bodies.

Under the terms of the statute liability for the license attaches to the "manager" as well as to the owner of the restaurant, cafe or eating house. In the case of restaurants, cafes and eating saloons operated on behalf of civic and fraternal organizations such as the Shrine Club, Y. W. C. A. and the like, there is nothing in any statute which I have been able to find which will relieve the "manager" of such a cafe, restaurant or eating house from liability for the required license tax. This could be done only by the passage by the Legislature of an Act so providing.

Yours very truly,

FRED H. DAVIS,
Attorney General.

AEROPLANES OR SEAPLANES—LICENSE TAX REQUIRED WHEN
ENGAGED AS COMMON CARRIERS FOR HIRE

February 4, 1931.

Dear Sir:

Section 6, paragraph (b), Chapter 14491, Acts of 1929, provides that each person, firm or corporation operating an aeroplane or seaplane for profit for the purpose of carrying passengers shall pay a license tax of \$50.00, provided that each county shall collect a license tax of \$25.00 for each landing or receiving station maintained for the receiving of passengers to be carried for hire or profit.

In my opinion the statute above referred to only applies to those operators of aeroplanes and seaplanes who engage in the business of common carriers of passengers for hire. I do not think that the law applies at all to planes which are merely used for carrying out sight-seeing passengers as distinguished from being engaged in a regular passenger carrying business.

In other words, it is aeroplane and seaplane passenger lines regularly engaged in the business of such, which are subject to taxation under the above quoted Section of the law. Ordinary landing fields forming no part of a passenger carrying service are not subject to taxation under this statute. Neither are aeroplanes or seaplanes which merely take up sightseers without being engaged in any regular business of doing so on regular schedule subject to the license tax provided by this Section.

The word "passenger" has a definite legal significance which is usually associated with common carriers, and it is upon the use of this word in the statute that my opinion is based.

Yours very truly,

FRED H. DAVIS,
Attorney General.

MONEY LENDERS—STATUTE CONSTRUED IN RE LICENSE TAX

February 10, 1931.

Dear Sir:

The above mentioned statute provides that each person, firm or corporation whose principal and established business is lending money shall pay an annual license tax of \$100, and that said Section shall apply to all persons engaged in the business, whether recognized under the laws of Florida or any other State or country, but shall not apply to banks or banking institutions regularly organized as such.

The law also provides that the payment of the license required shall authorize the doing of business only in the county where paid. This means that the sum of \$100 for the State license with an additional sum of \$50 for a county license must be collected for each and every county in which a person is engaged in the business of a money lender within the terms of the above mentioned act.

The extra \$50 is collected under the authority of Section 22 of Chapter 14491. Ordinarily only one State license is required for the entire State. See Section 5, Chapter 14191. But the terms of this Act itself expressly provided that a State license tax must be payable in each and every county. The license in question appears to be on a corporation whose purpose is to lend money on short term through an agent or representative, such as the company named in your letter.

Yours very truly,

FRED H. DAVIS,
Attorney General.

STATUTE CONSTRUED IN RE CONTRACTORS LICENSE TAX

March 2, 1931.

Dear Sir:

Answering your letter of February 24th, I beg to advise that the license tax on contractors provided for by Section 1130, Compiled General Laws, applies to any person who holds himself out as a contractor.

It makes no difference whether he has a regular office or established place of business or not. The only exception to this is that of a "building" contractor who would not be subject to the tax where he has no established place. The term "building" contractor would be understood to mean a contractor engaged in erecting a building of some kind. All other kinds of contracts, such as construction and bridge contractors, are subject to license tax, whether they have an established place or not.

The reason the so called "building" contractors are not required to pay license tax where they have no established place is because contractors engaged in erecting buildings usually have an established place in one county, but put the buildings up in several surrounding counties.

It was the intention of the law not to have a contractor to be required to pay a license tax merely for building a house or putting up a building in a county in which he had no established place. By an established place is meant any place, even a residence of the contractor, where he holds himself out as being ready, able and willing to accept employment as a contract.

Yours very truly,

FRED H. DAVIS,
Attorney General.

TAX SALE—CERTIFICATE—PROCEDURE WHEN ILLEGALLY SOLD

March 6, 1931.

Dear Sir:

I did not mean to imply in my letter to Mr. Amos, copy of which is enclosed with your letter of March 2nd, that the tax collector should be compelled to pay taxes which the State has already received from a tax certificate purchaser, when the certificate was sold, even though it was sold illegally.

The point involved is that it is the duty of the tax collector to at once take up any certificate which he issues illegally. After he takes it up, I am inclined to believe that he is subrogated to whatever rights the holder of such certificate would have under Section 1009, and that he would be able to ask the Comptroller to cancel such certificate and secure a refund of whatever surplus the State and county had acquired through the transaction over and above the actual amount of the taxes which should have been collected.

The point I make is that the burden is on the tax collector under Section 973, Compiled General Laws, to promptly redeem the tax certificate from the purchaser and then look to the State and county authorities by way of subrogation for recovery back of whatever is paid in excess of the amount that the State and county are entitled to receive.

In other words, the tax collector might take an assignment of the tax certificate which he is compelled to pay off, and then as the holder of such tax certificate ask that it be cancelled under Section 1009, and the money paid on same refunded to him.

I quite agree with you that there is nothing in the law which undertakes to make the tax collector pay the tax, as well as the tax payer.

Yours very truly,

FRED H. DAVIS,
Attorney General.

PERSONAL PROPERTY—WINDOWS DESIGNATED AND SOLD

March 21, 1931.

Dear Sir:

Replying to your favor of the 19th instant relative to whether or not the fifty-one windows which you have levied upon and sold as personal property for the payment of delinquent tax, I would state that it is my opinion that these windows under the circumstances set forth in your letter were personal property, although this might be a very close question. I take it from your letter that they were really ventilators, entirely detached from the building but set in and placed in the various openings as was necessary in the usual course of operating this duck farm.

Yours very truly,

CARY D. LANDIS,
Attorney General.

POLL TAX—LAST DAY FOR PAYMENT

April 1, 1932.

Dear Sir:

This refers to your favor of the 28th ultimo in which you ask to be advised whether the 14th or the 21st day of May, 1932, will be the last day for paying poll tax in order to be able to vote in the Primary Election to be held on June 7th, 1932.

It is my opinion that May 21st is the last day on which poll taxes can be paid. I am basing this on an opinion rendered by Judge Ellis in the case of the State of Florida, ex rel vs. White as Tax Collector, etc., reported in 73 Florida, page 426, and upon opinions of former Attorneys General, including my immediate predecessor, Justice Fred H. Davis.

Yours very truly,

CARY D. LANDIS,
Attorney General.

OIL COMPANY—DUTY OF COMPTROLLER TO COLLECT OC-
CUPATIONAL LICENSE TAX

May 18, 1931.

Dear Sir:

Replying to yours of the 13th instant in which you ask to be advised as to the correct occupational license tax to be collected from oil companies having their bulk stations in other counties but making wholesale deliveries to your county in tank wagons, permit me to say it appears that Section 4, Chapter 13756, Acts of 1929, supersedes all other statutes providing for an occupational license tax upon those engaged in the wholesale distribution of petroleum products in the State of Florida.

It appears from this Act that the collection of the license tax is imposed by the Comptroller of the State of Florida and that the county tax collector is relieved of all responsibility in connection therewith.

This opinion is based upon a superficial examination of the statutes because we have not had time to make a diligent search, owing to the great volume of work placed upon this office because of the Legislature being in session, and it may be that we will later find that there is an occupational license tax other than the one mentioned in the Chapter quoted above, and if so we will notify you at a later date.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX SALE—PUBLICATION OF MUST FOLLOW CLOSING OF
BOOKS

May 26, 1931.

Dear Sir:

I have your letter of the 23rd instant stating that you have a copy of my opinion rendered to Hon. Ernest Amos on the recent Act of the Legislature extending the time for the payment of taxes to June 15th, 1931.

I note from your letter that your books closed on April 1st and that you had made up your delinquent tax list, which had been actually printed by the publisher before the 28th day of April, although the first issue of the publication was not distributed until May 2nd. The statute provides that it shall

not apply to counties in which the books were closed and the delinquent tax lists had been or were being published and distributed. The purpose of the statute requiring publication of delinquent tax lists is to give notice to the public in general, and to the property owners in particular, of the proposed sale of land for the non-payment of taxes, and it is the act of putting the paper in circulation which constitutes the publication thereof in contemplation of the act under consideration. You will note that the act does not stop at using the word "published," but it uses "published and distributed."

I am compelled, therefore, to confirm my opinion rendered to the Comptroller that, under the facts stated, the delinquent tax list was not being published and distributed on the effective date of the act and that any publication or sale held pursuant thereto during the present year, to be legal must follow the closing of the tax books on June 15th.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX COLLECTING AGENCY—LICENSE TAX REQUIRED

June 2, 1931.

Dear Sir:

Replying to yours of the 28th ultimo in which you ask to be advised relative to the license tax and bond required under the statute for tax collecting agencies, permit me to say:

Section 1338 requires every tax collecting agency to apply annually for and receive a license from the County Judge of every county wherein such tax collecting agency proposes to pay taxes for others, and the statute requires the payment of a State tax of \$50.00 and a county tax of \$25.00, and that the County Judge may deny the issuance of such license for cause or such license may be revoked by the county judge for violation of Chapter 12414, Acts of 1927, the said Chapter being Section 1338 of the Compiled General Laws of 1927.

Section 1341, Compiled General Laws, provides that, before granting any license or renewal thereof, the county judge shall require the tax collecting agency to give bond with sufficient sureties to be approved by the judge in the sum of \$10,000.00, payable to the State of Florida for the use of any person damaged by reason of the unlawful act, fraud, neglect or embezzlement of such collecting agency, its members, officers or agents.

In view of the statutes referred to, we think that a tax collecting agency is required to pay the State and County tax and also make bond with the county judge in every county in which the agency conducts its business.

The statute appears to make it the duty of the county judge to issue the license.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ITINERANT MERCHANT—LAW CONSTRUED

June 8, 1931.

Dear Sir:

By Chapter 14528, Laws of Florida Acts of 1925, the term "itinerant merchant" is defined to mean any person who engages in this state in a seasonal business during certain seasons of the year only, selling or offering for sale goods, wares or merchandise. But this does not apply to merchants having a permanent place of business in the state throughout the year who engage in business therein only for a portion of the year.

If the French Rug Importing Company maintains a permanent place of business in Tampa where they engage in business all or only a portion of the year, they would not be subject to the license tax imposed by Chapter 14528 in that county, but that would not exempt them from the license tax required by said Chapter for doing an itinerant business in any other county in the state. So, notwithstanding the fact that they may maintain a permanent place of business in Tampa, they would still be liable for the itinerant merchants' license tax for their place of business in Duval County, unless such place of business in Duval County is a permanent place of business as defined by said Act.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TIRE AND TUBE DEALERS—LAW CONSTRUED

June 12, 1931.

Dear Sir:

This will acknowledge receipt of your favor of the 9th instant, in which you suggest that you would like to have an opinion from this office regarding tire and tube dealers as defined by Section 6, Chapter 12412, Acts of 1927, which reads as follows:

"Every person, firm or corporation who buys automobile tires and tubes or either for re-sale, or who is engaged in selling automobile tires and tubes or either, whether as a separate and independent business, or in connection with any other business, be and is hereby declared to be an automobile tire and tube dealer."

In reply thereto, permit me to say that we construe this Section to include any person, firm or corporation dealing in automobile tires and tubes, whether as a separate and independent business, or in connection with any other business, and whether a stock of goods is carried regularly or intermittently, or whether such person, firm or corporation merely acts as agent and delivers tires and tubes to the purchaser, or whether such tires and tubes are sold on consignment.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REGISTRATION—LAW REPEALED

June 24, 1931.

Dear Sir:

Replying to yours of the 23rd inst. in which you ask to be advised whether or not an elector may register before the tax collector, permit me to say Section 313 of the Revised General Statutes of 1920 provided that all persons desiring to register may do so in paying their poll taxes, by taking and subscribing to an oath in writing before the tax collector; but Section 6 of Chapter 13761 Acts of 1929 repealed Section 313 of the Revised General Statutes and an elector is not now permitted under the law to register before the tax collector.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX SALE NOTICE—PUBLICATION AND LENGTH OF TIME
REQUIRED

July 2, 1931.

Dear Sir:

Replying to your favor of the 30th ultimo, in which you advise that you anticipate holding the tax sale on September 7th, 1931, and request my opinion as to its legality of publication of the first notice is made on Friday, August 14th, and once each week thereafter up through September 4th, in your county paper which comes out on Friday, permit me to say that the above publication might be within the law. But to be on the safe side, so that there could be no ground for contest, it would be wise to have the notice begin publication on August 7th and end in the paper issued on September 4th.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX SALES—DATE TO BE DESIGNATED BY TAX COLLECTOR

July 7, 1931.

Dear Sir:

Replying to your verbal inquiry of this date, in which you asked to be advised whether or not the tax sale for unpaid taxes must be held on the first Monday in the month, permit me to say former Attorney General Davis held, in an opinion rendered June 19th, 1930, that the tax collector apparently has the right to designate any day for holding the tax sale, whether it is the first Monday in the month or not, and that Section 4523 of the Compiled General Laws is apparently applicable only to the holding of sales of property levied on under the judicial process and does not apply to tax sale.

The tax laws merely refer to selling property on a day designated in the notice of sale, and it is my opinion that if the law in other respects is complied with and the sale is held on the day designated in the notice of sale that such sale should be valid.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX ASSESSMENT—JUSTIFIABLE THOUGH DEED NOT ISSUED

July 9, 1931.

Dear Sir:

Replying to your favor of the 24th ultimo, in which you ask to be advised relative to assessment of lands bought on contract from the United States Government upon which buildings have been constructed, permit me to say it is my opinion that the Tax Assessor of your county would be justifiable in assessing the property to the purchaser, even though deed has not issued.

Certainly the purchaser has a beneficial interest in the property, and an assessment levied for state and county taxes if unpaid would constitute a lien against the property which might be enforced in a court of competent jurisdiction. It appears to me, to say the least, that the county has nothing to lose by assessing the property to the purchaser.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY OFFICIALS—INTERPRETATION OF STATUTE IN RE EXPENSES

July 28, 1931.

Dear Sir:

Replying to your favor of the 23rd instant requesting an opinion on two questions designated as follows:

(a) Should a county official pay for salaries of deputies only and deduct as expense on his semi-annual report to the Board of County Commissioners, and submit bills for books, stationery, postage, and all other incidentals such as ice, telephone and telegraph?

(b) Was it not the intent of this law for all expenses of office except salaries to be paid out of the excess moneys turned into the County Commissioners?

Permit me to say:

(a) Chapter 11954, Acts of 1927, provides that the County Commissioners shall create a fund from the excess fees of county officials, and shall expend the proceeds thereof for the purpose of equipping, maintaining, and sup-

plying said office from which said money is derived, with the necessary books, furniture, fixtures and all other things now supplied or furnished by the Board of County Commissioners and paid for by them from the General Revenue Fund of the county. It appears to be clear that the County Commissioners are authorized to supply your office with necessary books, furniture and fixtures, and we think under the wording of the statute that if the County Commissioners on May 21st, 1927, the date upon which Chapter 11954 became a law, were paying for incidentals such as ice, telephone and telegraph, that they would be authorized under the provisions of this Act to pay for such incidentals at this time.

(b) Replying to your second question, permit me to say that the County Commissioners have no authority except that given by statute. The statute above quoted appears to limit the supplies to be furnished to books, furniture, and fixtures, unless other incidentals were furnished and paid for by the Board of County Commissioners on May 21st, 1927.

Yours very truly,

CARY D. LANDIS,
Attorney General.

OKEECHOBEE FLOOD CONTROL TAXES—INTEREST REQUIRED TO BE PAID

August 10, 1931.

Dear Sir:

Replying to your favor of the 5th instant in which you ask to be advised specifically whether or not the Okeechobee Flood Control Board has the power to authorize the collection of 1929 flood control taxes without requiring the payment of interest, permit me to say that Section 22 of House Bill No. 799, Acts of 1931, provides that the taxes for the year 1929 shall bear interest at the rate of 8% from the first day of April, 1930, to the first day of April, 1931. The provision of the statute appears to be mandatory and unless there is express authority in the statute authorizing the Board to relieve tax-payers from the payment of the interest, it is my opinion that they would have no authority to do so.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX CERTIFICATES—COMMISSION ALLOWED

August 13, 1931.

Dear Sir:

Replying to your favor of the 9th instant in which you ask to be advised whether or not under Senate Bill No. 14-XX the Tax Collector is entitled to 5% on a tax certificate where the certificate sells for less than its face, per-

mit me to say that it is my opinion that the Tax Collector would be entitled to commissions on the amount for which the certificate sold and no more.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LICENSE TAX—WHEN CERTAIN WHOLESALE FRUIT AND
VEGETABLE BUSINESS REQUIRED TO PAY

August 27, 1931.

Dear Sir:

Replying to your favor of the 25th instant in which you state that you have in your county what is known as the Farmers' Exchange who rent stalls to parties from other states who engage in the business of wholesale fruits and vegetables brought to Florida by motor truck, and in which you ask to be advised what license those engaged in this business should be required to pay, permit me to say:

Section 3 of Chapter 13874, Acts of 1929, provides that all persons and corporations offering for sale farm or grove products grown in any state other than Florida and products manufactured therefrom shall be exempt from all forms of license tax, state, county and municipal, when the same is being offered for sale or sold by the person or corporation producing the said products, and when the state where the farm or grove product offered for sale is grown gives and affords to Florida farm and grove produce sellers or peddlers this same exemption as to license tax.

If the vendor is selling something other than farm or grove products or products manufactured therefrom or is selling grove or farm products or products manufactured therefrom which he has purchased from another he could be termed an itinerant merchant and required to pay the itinerant merchant's license under Chapter 14528, Acts of 1929, unless he has a permanent place of business in Florida, in which event he should be required to pay the regular merchant's license.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MERCHANT—NOT REQUIRED TO PAY LICENSE TAX FOR SELL-
ING COFFINS

UNDERTAKER—WHEN PERSON SHOULD BE DESIGNATED
SUCH, AND LICENSE REQUIRED

August 27, 1931.

Dear Sir:

Replying to your favor of the 25th instant in which you ask to be advised if a merchant who sells coffins but does not represent himself to be and does not practice the business of undertaking should be required to pay a license

as an undertaker, permit me to say we do not think that he should be required to pay such license.

In the case of the party you describe in your letter as selling coffins and caskets, digging graves and conducting funerals, we think that such person should be classed as an undertaker and should be required to pay an undertaker's license.

Yours very truly,

CARY D. LANDIS,
Attorney General.

POOL TABLES—LICENSE REQUIRED

September 9, 1931.

Dear Sir:

Replying to your favor of the 3rd instant in which you state that a number of miniature pool tables have recently come into your county and that the manager wishes to pay license for the operation of same, and in which you ask to be advised what the amount of the license should be and where you will find it listed, permit me to say the license statute makes no distinction between miniature pool tables and one of the regular size.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PAINT MANUFACTURING PLANTS—ENTITLED TO TAX EXEMPTION

September 24, 1931.

Dear Sir:

Replying to your favor of the 22nd instant, in which you ask to be advised whether or not under Section 12 of Article IX of the Constitution of the State of Florida, as amended, paint manufacturing plants are entitled to exemption from taxation under said Section and Article, permit me to say it is my opinion that they are not entitled to exemption from taxation.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MERCHANTS—REQUIRED TO PAY LICENSE TAX WHEN COUPONS ISSUED

October 8, 1931.

Dear Sir:

Replying to your favor of the first instant, in which you ask to be advised whether or not in my opinion that if a number of merchants should get together and give coupons with each purchase of merchandise and have an established place where the coupons are redeemed with premiums would they be

subject to the payment of a license as provided by Section 1199, Compiled General Laws of 1927, which provides that "merchants using trading stamps shall pay a license tax of \$250.00 for each place of business where they use such stamps," permit me to say that it is my opinion that a group of merchants operating as stated above should each be required to pay the license tax provided by Section 1199.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FILLING STATIONS—EXEMPT FROM CERTAIN LICENSE TAX

October 10, 1931.

Dear Sir:

Replying to yours of the 7th instant relative to whether or not filling stations selling lubricating oils and cup grease retail are required under the statute to pay a "store" or other license, permit me to say:

Section 8 of Senate Bill 8-X, the same being Chapter 15624, Laws of Florida, Acts of 1931, does not define filling stations engaged exclusively in the sale of gasoline and other petroleum products to be "stores", and expressly excepts them from that definition.

Gasoline is a petroleum product. And I think that a practical interpretation of the legislative intent would be to hold that lubricating oils and cup grease are likewise petroleum products.

Very truly yours,

CARY D. LANDIS,
Attorney General.

RUG CLEANING BUSINESS—LIABLE FOR OCCUPATIONAL LICENSE TAX

October 29, 1931.

Dear Sir:

I am in receipt of your letter of the 27th instant, making inquiry as to whether or not a license is required for cleaning rugs and upholstery.

Answering your inquiry, I beg to refer you to Section 16, paragraph "c" of Chapter 14,491, Laws of Florida, Acts of 1929, which provides as follows: "Each person, firm or corporation engaged in the business of renovating or cleaning rugs, carpets or upholstery shall pay a license tax as follows: In cities or towns of 50,000 or more population, \$10.00; in cities or towns of 25,000 and less than 50,000 population, \$7.00; in cities or towns of 5,000 and less than 25,000 population, \$5.00; in cities or towns of less than 5,000, \$5.00."

Yours very truly,

CARY D. LANDIS,
Attorney General.

VETERANS, DISABLED WAR—IN RE PEDDLER'S LICENSE

November 5, 1931.

Dear Sir:

Replying to your favor of the 21st ultimo, relative to peddler's license for disabled war veterans, permit me to say Chapter 15040, Acts of 1931, amended Section 20 of Chapter 14491, Acts of 1929, and the 1931 amendment does not limit the peddler to his home county.

It does require that the exemption shall be allowed only upon certificate of the county or other reputable physician certifying to the applicant's disability; and further provides that the exemption shall not apply to the peddling of spirituous, vinous or malt liquors, lightning rods and cigarettes.

Yours very truly,

CARY D. LANDIS,
Attorney General.

VETERANS, DISABLED—WHEN NOT EXEMPT FROM PAYMENT
OCCUPATIONAL LICENSE TAX

November 6, 1931.

Dear Sir:

Replying to your favor of the 3rd instant, in which you state that a disabled World War veteran has made application for a veteran's license for a barber shop and beauty parlor in your county, each of which carries a separate license and in which the veteran is only half owner, and that you do not feel that you could issue a free license, permit me to say:

It is my opinion that where a business is owned jointly by a disabled veteran, and a person who is not a disabled veteran, the exemption from occupational license does not apply.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LICENSE TAX—IN RE ADDING MACHINES, TYPEWRITER
REPAIRS

November 9, 1932.

Dear Sir:

Replying to yours of the 3rd instant, permit me to say under the provisions of Section 1055, Compiled General Laws of 1927, agents for adding machines are required to pay a State license of \$10 and a county license tax of \$5.

Section 18 of Chapter 14491, Acts of 1929, requires any person, firm or corporation in the business of repairing typewriters and permanently located, to pay a State license tax of \$5 and a county license tax of \$2.50.

Chapter 15624, Acts of 1931, provides the license tax to be paid by chain stores having and selling merchandise, and said Chapter does not repeal or supersede the sections of law above cited requiring agents for typewriters and adding machines, and those engaged in the business of repairing same, to pay the license prescribed by Section 1055, Compiled General Laws, and Section 18 of Chapter 14491, Acts of 1929.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DANCE HALLS AND NIGHT CLUBS—APPLICATION OF LAW IN
RE OCCUPATIONAL LICENSE TAX

December 1, 1931.

Dear Sir:

This refers to your favor of November 30th.

With reference to occupational license tax for night clubs, I would state that this is very largely a matter of practical application as to whether or not a restaurant license is applicable, or a license for a dance hall. If the major business is that of running a dance hall, and the service of something to eat is incidental, then the place would be liable to the dance hall license. On the other hand, if it is run in such a way that it is feeding people and furnishing food, and the dancing is only incidental, then, it is my opinion, that they should operate under a restaurant license. Of course, you understand that it is a matter of practical application on which you would have to determine these facts, and in the light of the character of the operation of the particular place from time to time.

Very respectfully,

CARY D. LANDIS,
Attorney General.

AEROPLANES—WHEN LIABLE FOR LICENSE TAX

December 7, 1931.

Dear Sir:

Replying to your favor of the 2nd instant, in which you ask to be advised whether or not you may collect a tax from persons operating aeroplanes for hire in your county, permit me to say:

Paragraph (b) of Section 6, Chapter 14491, Acts of 1929, provides that each county shall collect a license tax of \$25.00 for each landing or receiving station maintained for the receiving of passengers to be carried for hire or profit.

You state that in your county an abandoned field is being used by the

operators of the aeroplanes, and that the field is not maintained by anyone, and that the owners of the field make no charge for the use of the same.

Unless it can be established that someone is maintaining a landing or receiving station for the receiving of passengers to be carried for hire or profit, I do not see how you could ascertain who is liable for the tax. However, if you can settle the question of who is maintaining the landing or receiving field, it seems that under the statute you would be authorized to require the payment of the license.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BOARDING HOUSES—INTERPRETATION OF LAW IN RE OCCUPATIONAL LICENSE TAX

January 27, 1932.

Dear Sir:

Replying to your favor of the 18th instant, in which you request my interpretation of the provisions of the occupational license tax law reading as follows:

"Accommodation for lodgers or boarders shall be construed to mean the number of beds habitually kept for such lodgers or boarders and not the number of rooms in the house,"

permit me to say it is my opinion that the language of the statute is clear and that the tax should be based upon the number of beds habitually kept for lodgers or boarders and not upon the number of people that a bed might accommodate.

Yours very truly,

CARY D. LANDIS,
Attorney General.

POLL TAXES—WHEN EXEMPTION ALLOWED

February 18, 1932.

Dear Sir:

Replying to your letter of February 9, relative to poll tax exemptions, permit me to say Sections 9 and 10 of the Compiled General Laws of 1927 provide that a poll tax of one dollar shall be levied upon each person over the age of twenty-one years and under fifty-five years, and who has resided in the State for more than one year, except those persons who have lost a limb or have become disabled in the Army or Navy service.

Therefore, it appears that the exemption applies only to persons over age and to persons who have lost a limb or become disabled in the Army

or Navy service. The disability referred to as having accrued in Army or Navy service does not mean that the exemption would be allowable unless the person had become disabled in actual Army or Navy service. A disability acquired since Army or Navy service directly attributable to such service might entitle the person to an exemption, but not otherwise.

Very truly yours,

CARY D. LANDIS,
Attorney General.

POLL TAXES—WHEN PAYMENT FOR TWO YEARS NECESSARY TO VOTE

February 25, 1932.

Dear Sir:

Replying to your favor of the 22nd instant, permit me to say a person would not have to pay 1932 poll taxes to vote in the elections of 1932. However, the statute requires the payment of a poll tax for the two years next preceding the year in which the election is held. Therefore, unless exempt for one or more years, it would be necessary for an elector to have paid his poll tax for the years 1930 and 1931.

If a person became 55 years of age at any time after January 1st, 1930, it would be necessary for him to have paid a poll tax for 1930, but it would not be necessary for him to pay a poll tax for 1931.

Yours very truly,

CARY D. LANDIS,
Attorney General.

POLL TAXES—METHOD OF PAYMENT

March 2, 1932.

Dear Sir:

Replying to your favor of the 26th instant, in which you request me to advise you regarding the payment of poll taxes, permit me to say I am enclosing herewith a compilation of opinions based on the election laws, and call your attention to pages 20-21 thereof. You will see therein, that it has been held that where money is mailed to the Tax Collector for the payment of poll taxes, it should be accompanied by some proof or evidence to show the Tax Collector that the money is coming from the voter himself, and is not being put up by some other person for his benefit. This proof may be in the form of an affidavit or by letter signed by the voter with his correct name and address, reciting such fact.

I note that you state that every time there is an election of any consequence in your county, there are several thousand remittances made by mail, containing printed forms showing the name of the party requesting poll tax, the age, address, and years for which needed, together with the necessary

currency to cover, and a return envelope, which forms are presumably signed by the parties making the request, and that part of the return envelopes are addressed to residences, while a large number, sometimes several hundred, are addressed to the same post office box.

This manner of paying poll taxes should be sufficient in itself to put the Tax Collector on inquiry. There is only one circumstance under which one person can pay the poll tax for another person, and that is when the person whose poll taxes he undertakes to pay is assessed on the tax books for some amount of tax on real or personal property, and the entire amount of taxes on the real and personal property, including the poll taxes, are paid at one and the same time.

The main purpose of the law is to compel each voter to pay his own poll tax with his own money, and to prohibit the payment of poll taxes by any person, firm or corporation for the voter's benefit.

I think if you will read pages 20 and 21 of the enclosed pamphlet, you will find sufficient information to guide you correctly in this matter.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FEES—COLLECTING SPECIAL DISTRICT TAXES

April 12, 1932.

Dear Sir:

Chapter 14486, Acts of 1929, did not change the fees fixed by Section 1034 of the Compiled General Laws of Florida, 1927, for tax collectors for collecting special district taxes. Therefore, the fees fixed by Section 1034 continue as the legal fees to which the tax collectors are entitled.

Yours very truly,

CARY D. LANDIS,
Attorney General.

POLL TAXES—LAW DOES NOT AUTHORIZE APPOINTMENT DEPUTY TAX COLLECTOR TO COLLECT

April 5, 1932.

Dear Sir:

The only statutory authority for the appointment of a deputy or assistant to the Tax Collector is found in Section 955 of the Compiled General Laws of Florida, 1927, and this is confined to the purposes of levying upon and seizing personal property for unpaid taxes.

In view of this special provision and also in view of the statutory provision for the appointment of deputies and assistants to other county officers, I am inclined to the view that you would not be legally authorized to appoint deputies in the outlying districts of your county for the purposes of collecting poll taxes and issuing receipts therefor.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REGISTRATION—LAW DESIGNATES TIME

May 19, 1932.

Dear Sir:

Replying to your favor of the 16th instant, permit me to say the Supervisor of Registration is not authorized to register electors between the closing of the registration books and the primary election except those described in Section 369, Compiled General Laws.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LICENSE TAX—BUILDING CONTRACTORS REQUIRED TO PAY

June 17, 1931.

Dear Sir:

Replying to yours of the 9th instant in which you state that there are several sections of the license law requiring license for different classes of contractors, including building contractors, painters, plumbers and roofers, and in which you ask for an opinion as to whether or not a contractor should be required to have each of the licenses above mentioned, and in which you ask to be advised as to whether or not a building contractor may do the different kinds of work specified under the one license, permit me to say that it is my opinion that any person, firm or corporation holding themselves out to the public as being engaged in the business of contracting and repairing buildings should be required to have a building contractor's license, and that under the license he should be permitted to repair a building, including the roof thereof.

A person, firm or corporation holding themselves out to the public as being engaged in the business of roofing or re-roofing buildings should be required to have a roofer's license; and we think any person, firm or corporation holding themselves out to the public as being engaged in the business of painting should have a painter's license and if engaged in the business of plumbing should have a plumber's license.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX ASSESSMENTS—LAND AND IMPROVEMENTS ASSESSABLE.

June 22, 1931.

Dear Sir:

Replying to your letter of the 17th instant, I beg to advise that permanent houses, buildings, and other like improvements on land become a part of the realty and are assessable as such.

In other words, in arriving at the value of land for the purpose of taxation, you do not value just the land where there are improvements, but both the land and such improvements, and the value thus arrived at is assessed against the land in the name of the owner of the title to the land, or in case the owner is unknown and no return made, it is assessed in the name of "unknown."

It does not matter whether the owner of the land put the improvements on it or whether such improvements were put thereon by a lessee or a party under contract to purchase. They nevertheless become part and parcel of the realty and are taxable as such without distinction or separation.

The assessment is against the property for which the State and county has a lien, and if the taxes assessed against both the land and improvements are not paid, the land, together with the improvements, may be sold for non-payment.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAXES—WHEN BONDS RECEIVABLE AT PAR IN REDEMPTION
OF LANDS

June 28, 1932.

Dear Sir:

Chapter 15054, Acts of 1931, authorizes the County Commissioners to provide by resolution that bonds and delinquent interest coupons or other past due obligations of the counties, districts or municipalities, shall be receivable at par in the redemption of lands within such counties, districts, or municipalities, in the cancellation of tax certificates issued by the State, county, district, or municipality, when such unpaid taxes were levied for the year 1929 and prior years. This statute would not apply to taxes for 1931, and the tax collectors would have no authority to accept from the Florida East Coast Railway, bonds in payment of its taxes for 1931.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX CERTIFICATES—IN RE SIGNING

July 9, 1932.

Dear Sir:

I am in receipt of your letter of the 6th instant, advising that you will have about seventeen thousand tax certificates to sign following the August tax sale. You state that you would like to depute your secretary to assist you in the signing of these tax certificates, and make inquiry as to the procedure necessary to legally make such an appointment.

In reply, I beg to say that in my opinion tax certificates should be signed personally by the Tax Collector, and not by a deputy. This opinion is based on the language of Section 17 of Chapter 14572, Acts of 1929, which provides that tax certificates signed by the county Tax Collector shall be admissible in evidence, and shall be prima facie valid, which would lead to the presumption that those which are not signed by the county Tax Collector would not be admissible in evidence and prima facie valid.

While the signing of a tax certificate by a deputy in the presence of and at the direction of the county Tax Collector may not render the tax certificate invalid entirely, such signing would in my opinion render the certificate irregular, and subject to objection.

I may say in this connection that my predecessor during his term of office expressed the above views with reference to the signing of tax certificates with a rubber stamp.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LICENSE TAX—SICK AND FUNERAL BENEFIT COMPANIES AND
UNDERTAKERS AND EMBALMERS LIABLE

July 9, 1932.

Dear Sir:

I have your letter of the 6th instant, making inquiry as to whether Burial Insurance companies and Funeral Homes are subject to license taxes in Nassau County, when doing business in that county, although located outside of such county.

In reply I refer you to Sections 1182 and 1262, Compiled General Laws of 1927, with reference to licenses, respectively, for sick and funeral benefit companies, and for undertakers and embalmers. You will note also that Section 1054 provides that the county license taxes shall be paid to the county Tax Collector in each county in which any business shall be engaged in, unless otherwise provided in the Chapter. Under this Section it appears that burial insurance companies, and funeral homes doing an undertaking or embalming business in Nassau County, would be subject to the county license tax in that county, even though they may be located in another county.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SCHOOLS—TUITION FREE

September 10, 1932.

Dear Sir:

Your letter of September 3rd addressed to State Superintendent of Public Instruction, W. S. Cawthon, has been referred to this office for reply.

In reply thereto, permit me to say Section 493, Compiled General Laws, provides that there shall be established and maintained in the State of Florida a uniform system of public instruction free to all the youth residing in the State between the ages of six and twenty-one years, as far as the funds will permit.

In view of the statute quoted above, it is my opinion that no county in the State will insist upon a tuition fee from the parents of children who are permanent residents of the State who may have moved from one county to another with the intention of making the county to which they have moved their permanent place of residence.

Very truly yours,

CARY D. LANDIS,
Attorney General.

OCEAN SHORE IMPROVEMENT DISTRICT—CONSTRUCTION OF
LAW IN RE DISPOSITION OF TAX FUNDS

December 9, 1932.

Dear Sir:

This refers to your favor of November 29, requesting my opinion as to disposition of funds coming into your hands by collection of taxes under an assessment of fifteen mills on the tax roll for 1932 of the Ocean Shore Improvement District in Volusia and Flagler counties.

The Act creating this District, to-wit: Chapter 10013, Laws of Florida, Acts of 1923, was amended by Chapter 10952, Laws of Florida, Acts of 1925, and by Chapter 12735, Laws of Florida, Acts of 1927.

These laws provide that the Board of Bond Trustees of this District shall make an estimate of the money necessary to be raised each year to pay the interest upon, and create a sinking fund and a fund for the general maintenance of the District, and for general and special expenses of said District. This estimate is then certified, under the law, by the Board of Bond Trustees of the Ocean Shore Improvement District to the Board of County Commissioners of each of the counties. Whereupon it is made the duty of the Boards of County Commissioners to make a tax levy sufficient to raise the money estimated and set forth in the certified resolution of the Board of Bond Trustees of the Ocean Shore Improvement District. In other words, the Boards of County Commissioners have nothing to do, and no discretion of any kind, in fixing the amount of money to be raised. That is

a matter that rests exclusively in the judgment of the Board of Bond Trustees of the Ocean Shore Improvement District.

The duty, under the law, resting upon the Boards of County Commissioners is to make such a levy as will raise the money estimated and certified by the Bond Trustees. In other words, the duty of the Boards of County Commissioners is simply a mathematical one of determining the millage, and then making the levy accordingly.

In following this law, as above stated, I find the certified copy of amended resolution presented to the Boards of County Commissioners, found on page 455 of Amended Book Number 11 of the County Commissioners of Volusia County, is as follows:

"Whereas, it is deemed advisable by the Board of Bond Trustees of Ocean Shore Improvement District, a special taxing district in Flagler and Volusia counties, Florida, to clarify the meaning of the resolution heretofore adopted by said Board at its meeting, which was held at Daytona Beach, Florida, on the 30th day of June, A. D. 1932, a copy of which resolution has heretofore been certified to and submitted to the respective Boards of County Commissioners of Flagler and Volusia counties, Florida, so that there can be no possible misconstruction of the meaning of said resolution,

"Now Therefore, be it resolved by the Board of Bond Trustees of Ocean Shore Improvement District in Flagler and Volusia counties, Florida, that the resolution heretofore adopted by said Board on the 30th day of June, A. D. 1932, and certified to and submitted to the respective Boards of County Commissioners of Flagler and Volusia counties, Florida, be and the same hereby is amended, re-enacted and re-adopted, so that said resolution, as amended, and re-adopted, shall read as follows:

"Be It Resolved, by the Board of Bond Trustees of Ocean Shore Improvement District in Flagler and Volusia counties, Florida, that the amount of Sixty Thousand Dollars (\$60,000.00) is necessary to be raised by tax to be assessed and levied for the year 1932, to pay the interest upon and create a sinking fund for the payment of the principal and interest of the outstanding bonds and certificates of indebtedness of Ocean Shore Improvement District, a special taxing district in Flagler and Volusia counties, Florida, for the ensuing current year, including the general and special expenses of said District, and also including compensation to said Trustees, attorney's fees, bookkeeping expenses, and the other general and special expenses of said District authorized by law, to be paid by the Trustees of said District.

"Be It Further Resolved, that out of said amount of said Sixty-Thousand Dollars (\$60,000.00) herein required to be collected, that the tax collectors of Flagler and Volusia counties, Florida, respectively, and the Comptroller of the State of Florida, be requested and instructed to pay, turn over and deliver to the Board of Bond Trus-

tees of Ocean Shore Improvement District, in accordance with the just pro rata share which each should pay, the total sum of Twelve Thousand Five Hundred Dollars (\$12,500.00), for the payment by said Board of Bond Trustees of Ocean Shore Improvement District, of the said general and special expenses of the District, including compensation to said Trustees, attorney's fees, bookkeeping expenses and all other general and special expenses of the District which are authorized by law to be paid by the Trustees of said District.

"That an equal five-twenty-fourths ($5/24$) of said tax of Sixty Thousand Dollars (\$60,000.00) and of each and every portion thereof, when collected, shall be remitted and delivered upon collection to the Board of Bond Trustees of Ocean Shore Improvement District, for the payment by said Board of the said general and special expenses of the District, as aforesaid; and that, an equal nineteen-twenty-fourths ($19/24$) of said tax of Sixty Thousand Dollars (\$60,000.00) and of each and every portion thereof, when collected, shall be remitted and delivered, upon collection, to the Treasurer of the State of Florida, to pay the interest upon and create a sinking fund for the payment of the principal and interest of the outstanding bonds, and certificates of indebtedness of the District."

This amended resolution was by order of the Board of County Commissioners of Volusia County spread upon its minutes, and is the basis upon which the Board made its levy. I find in the minutes of the Board of County Commissioners of Volusia County, on page 532, that the Board at its regular session held October 31, A. D. 1932, at 12 o'clock noon, made the levy required by the resolution in words and figures as follows:

"The Board then proceeded to fix the millage for the Ocean Shore Improvement District, as provided by the laws of Florida, and it was determined that a tax of fifteen mills on the dollar be levied, and is hereby fixed for the year A. D. 1932, on all the property in the County of Volusia, lying and being within the boundaries of the said district, for the purpose of paying interest and creating a sinking fund for the retirement of the bonded debt, and for the purpose of paying administrative expenses of said district."

The above resolution making the levy is the vital thing in determining where the money shall go when collected under this levy. It seems that the Tax Assessor, in running it out simply ran out the levy as follows:

"Ocean Shore Sinking Fund	15 Mills
Maintenance Fund	— Mills"

If the Tax Assessor had done his duty correctly and fully, this would have been run out setting forth the mills required for the sinking fund and the millage necessary for the administrative expenses of the District, but the fact that the Tax Assessor failed to properly do this makes no difference as to the legal effect of the levy made by the County Commissioners.

It will be noted that the County Commissioners properly found that it took fifteen mills for two purposes. One purpose was to pay interest and create a sinking fund for the retirement of the bonded debt, and the other purpose was for paying administrative expenses of said district.

Referring back to the law governing the district, it provides that "all moneys collected for the aforesaid purposes (interest, sinking fund, maintenance, general and administrative expenses) shall be paid over by the Tax Collectors of Volusia County and Flagler County, Florida, respectively, Comptroller of the State of Florida, or other person receiving the same on account of taxes collected or properly sold therefor, to *said Board of Bond Trustees as soon as collected.*"

The general Board of Administration law of Florida, as well as a later act pertaining to this district, provides that the moneys collected by you for the interest and sinking fund shall be turned over to the Board of Administration at Tallahassee, but the law remains that as to the moneys going for general administrative expenses of the district, shall be paid to the Board of Bond Trustees of the District.

Inasmuch as the Board of County Commissioners did not specifically segregate these accounts to determine how much of the fifteen mills should be paid to the Board of Bond Trustees of the District for general administrative expenses, and how much should be paid to the State Board of Administration to care for the sinking fund and interest, it is necessary to refer to the certified copy of the resolution, which forms the basis for the levy by the County Commissioners, and which is from the legal standpoint a part and parcel of the resolution making the levy; and this resolution provides that five-twenty-fourths ($5/24$) of the moneys received by you from the fifteen mills levy, shall be for general and special expenses of the District; and nineteen-twenty-fourths ($19/24$) of the moneys collected by you shall go to the State Board of Administration to pay interest and create a sinking fund.

Thus it is that, under the law and the acts of the Board of Bond Trustees and of the Board of County Commissioners, as above set forth, I am clearly of the opinion that for you to get a proper release and acquittance for the moneys collected by you, it will be necessary for you to turn over five twenty-fourths ($5/24$) of these moneys to the Board of Bond Trustees of the Ocean Shore Improvement District, and that you turn over the other nineteen-twenty-fourths ($19/24$) to the State Board of Administration. If you have already remitted on a different basis than this, out of the future collections, I would suggest that as soon as possible you make your remittances so as to put the accounts of the Board of Bond Trustees of said District, and of the State Board of Administration, so that each will show from time to time that it has received from you such proportion of the fund as it is entitled to, as above outlined.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CHIEF TRAFFIC OFFICER
MOTOR VEHICLES—SPEED LIMIT

April 8, 1932.

Dear Sir:

This refers to your favor of the 7th instant, in which you quote from an opinion rendered by my predecessor, the Honorable Fred H. Davis. Your quotation is as follows:

"Insofar as motor vehicles used expressly for carrying passengers are concerned, the speed limit is now forty-five miles per hour under the above Section, unless otherwise fixed by regulations of the Railroad Commission."

I concur in this opinion, which opinion is based on Chapter 13700, Acts of 1929, which in Section 11 thereof has this language:

"But motor vehicles used exclusively for carrying passengers may be operated at any rate not exceeding 45 miles per hour."

In Section 12 of Chapter 14764, Acts of 1931, we find this language:

"No auto transportation company holding certificate or permit shall operate any motor vehicle on the public highways in this State in excess of the speed now permitted by the laws of this State."

It is, therefore, my opinion that Chapter 14764 did not effect a repeal of Chapter 13700 insofar as the speed limit of motor vehicles carrying passengers is concerned.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CITY OFFICERS
CHIEF OF POLICE
FEES—WHEN ENTITLED TO

March 2, 1931.

My Dear Chief:

The law referred to in your letter of February 24th on the above subject would depend entirely upon what your city charter and ordinances provide on the subject. Unless you have an ordinance of the City of High Springs, or some provision in the charter of the City of High Springs which provides that the chief of police shall receive fees, mileage, etc., for arresting prisoners, you would not be entitled to present a bill for or collect such fees.

There is no State law which entitles a chief of police to fees for making arrests, commitment to jail, release, etc. Therefore, whatever law there is on the subject would have to be local, and the only way that this could be found out would be to examine your city charter and local ordinances to see if such a regulation exists.

Yours very truly,

FRED H. DAVIS,
Attorney General.

CITY ATTORNEYS

BALLOTS—DISPOSITION BY CITY LEFT TO GOVERNING AUTHORITY

August 8, 1931.

Dear Sir:

Replying to your favor of the 5th instant, in which you state that you are confronted with the question of destroying or otherwise disposing of the election ballots of several elections held by the City of St. Petersburg, and in which you ask my advice regarding the disposition to be made of the same under Section 342, Compiled General Laws, permit me to say that the Section referred to relates to State and County elections.

The conduct of municipal elections is usually governed by provisions of the City Charter and municipal ordinances. Permit me to suggest that if your city charter and ordinances do not make any provision for the disposition of the accumulated ballots cast in previous elections, that the disposition of them, in my opinion, would depend upon the governing authority of your municipality.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LOCAL BILLS—PUBLICATION DOES NOT APPLY TO BILLS AFFECTING MUNICIPALITIES

August 22, 1931.

Dear Sir:

Replying to your favor of the 5th instant which has been delayed on account of urgent State business which required my immediate attention, permit me to say:

House Bill No. 136-X, the same being an Act to abolish the municipality of South Miami and to re-establish the municipality to be known and designated the City of South Miami, being an Act affecting a municipality and

the same having a referendum clause in it, it was not necessary that notice be published. The constitutional amendment requiring the publication of local bills, as a prerequisite to their introduction in the Legislature does not apply to bills affecting the government of a municipality.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MUNICIPALITIES—IN RE REDEMPTION OF TAX LIENS AND
TAX CERTIFICATES ON INSTALLMENT

September 3, 1931.

Dear Sir:

Replying to your favor of the 28th ultimo, in which you request my opinion on the question of whether or not it is optional with or mandatory upon municipalities of the State to accept payment of taxes to them in accordance with the provisions of Senate Bill No. 12-XX, provided no special law relating to such taxes and governing such municipalities were adopted subsequent to the adoption of said Act, and in which you ask for my opinion as to whether or not Senate Bill 12-XX is valid, permit me to say:

It is the duty of all administrative officers to consider all statutes enacted by the Legislature to be valid, until the contrary is made to appear by a decision of a court of competent jurisdiction.

Section 3 of Senate Bill 12-XX does not appear to make it optional with the officer having charge of the redemption of tax liens or tax certificates, and it is my opinion that the said Section imposes a duty upon such officer to accept installment payments for the redemption of tax liens or tax certificates, provided the person tendering the payment does so in conformity with the provisions of the statute.

The governing authority of a municipality not wishing to permit the payment of taxes according to the terms of Senate Bill 12-XX might refuse to accept installment payments and place the burden upon the taxpayer to compel the acceptance thereof by mandamus.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAXATION—MASONIC HOME OF FLORIDA EXEMPT

October 13, 1931.

Dear Sir:

Under the provisions of Chapter 12088, Laws of Florida, Acts of 1927, all property of the Masonic Home of Florida is exempt from taxation for all purposes. This, however, does not apply to property belonging to Masonic bodies other than the Masonic Home of Florida.

Property belonging to other Masonic bodies, if exempt, is controlled by the provisions of Section 897 of the Compiled General Laws of Florida, 1927. Property to be so exempt must be occupied and used solely for the purpose for which the lodge or institution has been or may be organized.

Section 893 of the Compiled General Laws of Florida makes all real and personal property in the State, and personal property belonging to persons residing in the State subject to taxation except where such property is expressly exempt by law.

In other words, the exemption is the exception and not the rule, and must be strictly construed.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CHAIN STORES—MUNICIPALITIES MAY IMPOSE TWENTY-FIVE PER CENT OF STATE TAX

October 24, 1931.

Dear Sir:

This refers to your favor of the 20th instant, which deals with the question of whether or not the Chain Store Law, known as House Bill No. 8-X, insofar as stores are concerned, supersedes all other license laws in the various municipalities, with reference to such stores as fall within the Chain Store Law.

It is my opinion that the Chain Store Act meant to cover the entire field of taxes on chain stores, and that it would be exclusive of any other method of taxation by municipalities; therefore, it seems to me the maximum amount of license tax to be levied by municipalities in the State of Florida would be 25% of the State tax imposed by the Chain Store Act.

Yours very truly,

CARY D. LANDIS,
Attorney General.

AUTOMOBILES—CITIES AUTHORIZED TO REGULATE WEIGHT OR LOADS WHILE BEING OPERATED ON STREETS

November 3, 1931.

Dear Sir:

I am in receipt of your letter of the 28th ultimo, asking if a municipality may pass an ordinance limiting the load of motor vehicles which pass over its streets when the motor vehicles are licensed by the State Railroad Commission.

By reference to Chapter 15625 and Section 2 thereof, Acts of 1931, which is an amendatory Act with reference to motor vehicles, I find that para-

graph 4 provides that no motor vehicle shall be operated on the public highway outside of any municipal corporation in this State carrying a load of more than 16,000 pounds, including the weight of such motor vehicle. Other paragraphs in this Section contain regulations of motor vehicles on highways outside of municipal corporations.

In Chapter 14764, Acts of 1931, "An Act for the supervision and regulation of motor vehicles," I find this provision in Section 30 of said Act: "There shall be further exempted from the provisions of this Act and from commission jurisdiction and control persons, firms or corporations operating motor vehicles within the corporate limits of any city or towns * * *."

Since the above mentioned regulatory Acts appear to have reference to highways outside of municipalities and since I do not know of any statute prohibiting municipalities from regulating the weight of motor vehicles or loads carried by the same when operated on streets of the municipality when such streets are not State or county highways, I do not know of any reason why a municipality may not pass a regulatory ordinance on this subject provided the charter of such municipality contains the authority for such action either actually or impliedly.

Yours very truly,

CARY D. LANDIS,
Attorney General.

NATIONAL BANKS—FURNITURE AND FIXTURES NOT SUBJECT TO TAXATION

June 25, 1932.

Dear Sir:

I am in receipt of your letter of June 10 making inquiry with reference to assessment and payment of upon furniture and fixtures owned by National Banks.

In reply I beg to say that the property of National Banks is not subject to taxation unless authorized by Federal statute. Section 548 of Title 12, United States Code Annotated, provides for certain taxation of national banking assessments and for the Legislatures of the States to tax shares of national banking assessments, but I find no general provision for taxing personal property of such lands.

I beg to refer you to Note No. 43, under the above Section, from which it appears that the furniture and fixtures of national banks are not subject to State taxation.

Very truly yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX—MASTER'S DEED NOT EXEMPT

October 5, 1932.

Dear Sir:

This refers to your favor of September 30.

In my opinion Master's deed conveying property to a municipality for delinquent taxes due said municipality, is required to have the documentary stamp, provided by Chapter 15787, Acts of 1931, regardless of whether the municipality pays such tax. The Act in itself makes no exception in favor of municipalities and, under authority of the case of City of Lakeland, et al., versus Amos, recently decided, and City of Palm Beach versus Amos, 130 So. 710, it is my opinion that a municipality is not exempt from the payment of such tax.

• Very truly yours,

CARY D. LANDIS,
Attorney General.

CITY CLERKS

AUTOMOBILES—AUTHORITY OF CITY TO ASSESS FOR TAXATION

June 2, 1931.

Dear Sir:

Replying to yours of the 28th ultimo in which you ask to be advised relative to the authority of a city in the assessment and taxing of automobiles under the amendment to the State Constitution adopted in November, 1930, and in which you state that it has been the practice in your city to assess cars carried in stock by a dealer collectively as a part of stock, permit me to say:

We construe the constitutional amendment to mean that motor vehicles as property shall be subject to only one form of taxation, which shall be a license tax for the operation of such motor vehicles after the motor vehicle has been sold to the person who is to operate it, and not to a stock of automobiles carried by a dealer as merchandise. We think perhaps that you would be authorized to assess the motor vehicles carried in stock on the first of January by a dealer just as you would assess the stock of any other merchant in your city.

As yet the Supreme Court has not construed the amendment to the Constitution referred to, and this opinion, of course, would be revised to conform to any different construction that the Supreme Court might place upon the amendment.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WIDOWS IN RE TAX EXEMPTION

September 18, 1931.

Dear Sir:

Replying to your favor of the 17th instant, in which you ask to be advised whether or not a municipality has a right to tax a widow who claims an exemption under the laws of this State, permit me to say:

Section 9 of Article IX of the Constitution of the State of Florida reads as follows:

"There shall be exempt from taxation property to the value of five hundred dollars to every widow that has a family dependent on her for support, and to every person who is a bona fide resident of the State and has lost a limb or been disabled in war or by misfortune."

The exemption should be claimed by making affidavit asking for same and filing same with the tax assessor before the tax is assessed, or if the tax has already been assessed by making the affidavit and proof before the tax collector prior to the payment of the tax. The claim must be made each year and if not renewed each year may be disregarded by the taxing authorities.

The question of whether or not a city or town allows the exemption provided for by the Constitution is one to be determined by the governing authority of the municipality.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX SALE NOTICE—METHOD OF PUBLISHING

September 25, 1931.

Dear Sir:

Replying to your favor of the 21st instant, permit me to say:

Section 36 of Chapter 9767, Acts of 1923, creating the City of Graceville, provides that the council may publish the notice of tax sale in a newspaper in the city, or may cause such notice to be posted in three or more conspicuous places about the city. And inasmuch as the Act creating the city was passed subsequent to Section 3004, Compiled General Laws, which is an Act of 1877, providing for the publication of such notices in a newspaper or by posting, if there be no newspaper in the city or town, it is my opinion that it would be perfectly legal for your city to publish the tax sale by posting, as provided in Section 36 of Chapter 9767.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAXATION—DISCOUNTS ALLOWED OPTIONAL WITH CITY

October 29, 1931.

Dear Sir:

I am in receipt of your letter of the 21st instant, making inquiry as to whether it is mandatory upon the City of Lynn Haven to grant the same discount on payment of taxes during the months of November, December, January and February as are given by the State and County Tax Collectors, or whether, under the State law, this would be optional with the City Commission and I note your reference to Section 28 of Chapter 13,042, Special Laws of Florida, Acts of 1927.

In reply I beg to say after reading the above mentioned Section 28 it appears the matter of allowing discounts, above mentioned, is optional with the City.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MOTOR TRANSPORTATION COMPANY IN RE TAXATION

February 5, 1932.

Dear Sir:

Replying to your two letters under date of January 29th, permit me to say where a motor transportation company is the holder of a permit granted by the Railroad Commission, and pays a mileage tax, municipalities have no authority to levy a tax of any kind upon such companies, except ad valorem taxes levied upon their property other than motor vehicles.

In reply to your second question in which you ask to be advised whether or not municipalities are affected by the 1931 Act of the Legislature, which requires the Comptroller to collect occupational license taxes and remit a certain part thereof to the City, permit me to say the statute requires that this be done. However, we are advised that at least one municipality has declined to accept the remittance made by the Comptroller, and is insisting upon the right of the municipality to levy an occupational license tax according to their city ordinance. So it is largely up to the governing authorities of the municipalities to determine whether the city will be governed by the general law, or will insist upon enforcing their own ordinances on the subject.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LICENSE TAX—ASSESSMENT AND COLLECTION BY CITY

February 9, 1932.

Dear Sir:

Replying to your letter of February 6th, permit me to say:

It is up to you to decide from your knowledge of the business the kind of license your city should collect. However, as a practical proposition I think it would be proper to be guided by the State and county tax, that is, if the State and county has issued license as merchant, then the city should do likewise. If the State and county license is for merchant and packing house, you would be justified in requiring the same kind of license. See Section 2, Chapter 14491, Acts of 1929, page 127, Compilation of Laws, relating to assessment and collection of taxes and licenses published by State Comptroller for 1930.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX EXEMPTIONS—DUTY CITY TO AUTHORIZE ASSESSING
AND COLLECTING AUTHORITY

November 11, 1931.

Dear Sir:

Replying to your favor of the 10th instant relative to the exemptions from taxation to be allowed to certain persons, permit me to say:

The constitutional provision relative to exemptions was no doubt intended to apply to cities and towns as well as to the State and county. However, there is no mandatory provision of law expressly requiring municipalities to observe the constitutional provision.

Permit me to say we do not have the time to read your city charter, but think it sufficient to state that unless there is an express provision in the same allowing the exemption, it is up to the governing authority of your city by ordinance or resolution, to authorize the tax assessing and collecting authority to either allow or deny the exemption from taxation as provided by the Constitution of the State of Florida.

May I suggest that there are several attorneys in Bay County, any one of whom is well qualified to act as City Attorney for the City of Lynn Haven, and that the many duties imposed upon the Attorney General by law makes it impossible for him to act as council to the several cities and towns of the State.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CITY COUNCIL

ELECTRIC CURRENT—TAX DUE ON GROSS AMOUNT

January 7, 1932.

Dear Sir:

Replying to your favor of the 31st ultimo, permit me to say Chapter 15658, Acts of 1931, requires the payment of a tax by all persons, firms or corporations, including municipalities selling electric current, and such tax is one and one-half percent on the gross amount received from the sale of electric current.

Therefore, it would be proper for the power company to pay a tax on the gross amount received from the city, and it would be proper for the city to pay a tax on the gross amount received from the consumer.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CITY RECORDER

BILLBOARDS—IN RE TAXES

February 14, 1931.

Dear Sir:

Paragraph (a), Section 6, Chapter 14491, provides as follows:

"Advertising agencies painting or having sign boards and billboards in ten counties or less shall pay a license tax of \$75; in more than ten counties shall pay a license tax of \$200; provided, further, that county license shall be \$10."

Under this law of 1929 cities are permitted to charge \$37.50 license on companies which operate in ten counties or less, and are permitted to charge a license tax of \$100 where the companies operate in more than ten counties. In this connection it may be stated that some cities and towns possibly have special charters which would have the effect of authorizing the cities and towns to provide license taxes on these companies, regardless of the limitations fixed by the general State laws on the subject.

However, you would have to consult your particular charter as to this angle of the situation. As you will notice under the general State law the amount of the tax is based not upon the number of bill boards used, but upon the number of counties in which the company operates.

Yours very truly,

FRED H. DAVIS,
Attorney General.

CITY TAX COLLECTOR

CITIES AND TOWNS—LAW CONSTRUED IN RE MONEY TO BE RECEIVED FROM SPECIAL ROAD AND BRIDGE TAXES

March 3, 1931.

My Dear Sir:

Under Section 2453, Compiled General Laws, the county commissioners are required to turn over to cities and towns in their counties one-half the amount realized from special road and bridge taxes collected, on property in incorporated cities and towns, said moneys to be used in repairing and maintaining the roads and streets of such cities and towns.

This means that the town of Wildwood would be entitled to one-half of the taxes collected on property in Wildwood, pursuant to a county levy for road and bridge purposes made as provided in Section 2453. If no such levy is made by the county there will of course be no liability on the county to the city.

The proper manner of handling the subject is to present a claim to the county commissioners for one-half of any amount that may have been collected for road and bridge purposes on property in the City of Wildwood. This law, you will understand, does not apply to moneys collected for road and bridge bonds, but only for road and bridge purposes.

Yours very truly,

FRED H. DAVIS,
Attorney General.

CITY TREASURER

ELECTION BALLOTS—GUM STICKERS OR RUBBER STAMPS SHOULD NOT BE USED

March 30, 1932.

My Dear Sir:

This refers to your favor of March 27, in which you ask the question as to whether or not gum stickers or a rubber stamp may be used in placing the name of a candidate upon the election ballot.

I assume that you are referring to a city election, and this matter may be controlled by your town or city ordinances. Unless you have specific ordinance authorizing anything like this, it is my opinion that you cannot use gum stickers or a rubber stamp.

Section 331, Compiled General Laws of 1927, among other things says this:

“* * * and there prepare his ballot by marking with pen and ink or pencil in the appropriate margin or place a cross mark (X) before the name of the

candidate of his choice for each office to be filled, *or by filling in the name of the candidate of his choice in the blank space provided therefor*, and marking the cross mark (X) in the appropriate margin, * * *."

Under the general election law, it is clear to me that the Legislature intended that the only method of putting in the name of a candidate on a ticket, where it was not printed on it, should be by pen and ink or pencil by the voter himself; so it is unless your local law controls the matter, I am clearly of the opinion that gum stickers or rubber stamps should not be used.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

MAYORS

CITY OF EUSTIS—IN RE CHARTER POWERS

January 14, 1931.

Dear Sir:

Pursuant to your request I have examined the statutes under which the City of Eustis was created in 1913, particularly with reference to the powers of taxation given the city and the means provided by law for enforcing the collection of taxes.

Under the 1913 charter the city attorney is given power to bring foreclosure suits for enforcing the collection of taxes which are one year or more delinquent. It appears also that adequate penalties are provided in the charter to enable the city to not only realize the amount of the tax, but realize a sufficient amount in penalties to make an enforcement of the taxes worthwhile.

This power of foreclosure has been recently sustained by the Supreme Court, insofar as State and county taxes are concerned, and was sustained some years ago in a case arising from the City of Orlando.

I am convinced that the charter powers of the present City of Eustis are adequate if properly exercised to enforce the payment of city taxes or deprive those who will not pay their taxes of their property rights in the city.

The only suggestion I could make for a change in the city charter on the subject of enforcing the collection of taxes would be to recommend that the charter be amended so as to embrace in the charter the identical provisions of the 1929 tax law for enforcing taxes. The advantage of doing this would be of course making the method of enforcing the city taxes harmonize and be uniform with the method of enforcing state and county taxes.

It might also result in making the city tax certificates which would be issued pursuant to tax sales more attractive to purchasers, because of the pro-

visions of the 1929 law which allow an attorney's fee to the holder of a tax certificate for enforcing the same.

The present city charter of the City of Eustis does not allow an attorney's fee to a tax certificate purchaser.

Yours very truly,

FRED H. DAVIS,
Attorney General.

FREE HOLDER—DEFINITION

August 26, 1931.

Dear Sir:

Replying to your favor of the 17th instant in which you ask to be advised what constitutes a "free holder" under the laws of Florida permit me to say the Supreme Court of Florida has defined a free holder as one who has an immediate beneficial ownership interest, legal or equitable, in the title to a fee simple estate in land.

Yours very truly,

CARY D. LANDIS,
Attorney General.

XVIII.

MISCELLANEOUS CORRESPONDENCE

The following are only a few of the letters written by this office to various persons in this State which may be of interest to the public generally.

DENTISTRY—INTERPRETATION OF LAW

January 5, 1931.

Dear Sir:

Answering your letter of December 22nd on the above subject, I beg to advise that the statutes of Florida relating to the practice of dentistry do not apply to a person who without maintaining any office or established place of business undertakes to extract teeth without the use of a local or general anaesthetic and without charging a fee therefor.

Neither does the statute apply to the furnishing, fitting or supplying of false teeth without charge. However, the Act applies to any person who is manager, proprietor, operator or conductor of a place for performing dental operations, whether he makes a charge for his services or not.

Yours very truly,

FRED H. DAVIS,
Attorney General.

LEGISLATION—INITIATIVE AND REFERENDUM IN RE ELECTION

January 6, 1931.

Dear Sir:

Your letter of December 24th addressed to the Secretary of State has been handed to me for reply. I will answer your several questions as follows:

1. This State has never adopted the initiative and referendum for legislation. An amendment to this effect was favorably voted by both branches of the Legislature in 1911, but the manner in which the amendment was proposed was held unconstitutional by the Supreme Court and as a result, the holding of a state-wide election to ratify the same was enjoined about thirty days before the general election. Therefore, the amendment was never adopted.

2. Florida has had a direct primary since 1901.

3. This State will not have direct election of Senators before the adoption of the 17th Amendment to the United States Constitution, because such method of direct election would have been unconstitutional prior to the adoption of that amendment. However, the State did have a system of nominating its Senators in direct primaries, the result of which was equivalent to

the election by the Legislature, so in all practical intents and purposes Senators have been elected directly by the people in Florida since 1901, when the primary system provided for their direct nomination by the people, a legislative election being a mere formal matter ratifying the primary nomination.

4. The recall provision is contained in the charters of quite a number of Florida cities. All Florida cities have special charters, and a great many of them have the recall contained therein. This is particularly true of all those cities in Florida which have a commission manager form of government. For example, Tallahassee, the Capitol City of Florida, has a commission manager form of government with the recall. The same thing may be said of St. Augustine, Tampa, and Miami, two of the largest cities of the State, also have similar provisions.

Yours very truly,

FRED H. DAVIS,
Attorney General.

COMPULSORY SCHOOL ATTENDANCE LAW—SUPERINTENDENT RESPONSIBLE FOR ENFORCEMENT

January 7, 1931.

Dear Madam:

Answering your letter of January 3rd I beg to advise that I know of no authority in the county superintendent of public instruction or in the school board to appoint anyone to act as assistant or agent to enforce the compulsory school attendance law.

The county superintendent himself as a general school officer of course has the right to see that this law is enforced. In fact, it is his duty to do so. If the school board has someone regularly employed as a clerk or other school employee, there is nothing to prevent the county school superintendent from using the services of such secretary or school employee in helping him to carry out the law, but at the same time, the responsibility is the responsibility of the superintendent himself, and cannot be vested in anyone else under the present statute.

Yours very truly,

FRED H. DAVIS,
Attorney General.

DUE BILLS—BOARD OF PUBLIC INSTRUCTION NOT AUTHOR- IZED TO ISSUE

January 7, 1931.

Dear Sir:

This will answer your letter of January 3rd regarding the above subject.

As a matter of fact, the Supreme Court has held that a board of public instruction has no right to issue so-called "due bills," and such bills as have been issued by them are invalid and unenforceable, except as they may be pay-

able out of revenue realized during the current year for which they were issued.

What I mean is that the Supreme Court has held that each school year stands by itself and that money of one year cannot be used to pay off debts contracted in a preceding year. Furthermore, even if the due bills were entirely valid there would be no authority for using such due bills in payment of any kind of taxes, whether school taxes or otherwise.

Yours very truly,

FRED H. DAVIS,
Attorney General.

DENTISTRY—CORPORATION NOT AUTHORIZED TO PRACTICE

January 7, 1931.

Dear Sir:

Answering your letter of December 29th on the above subject, I beg to advise that in my opinion the present laws of Florida do not permit a corporation to practice dentistry or to be licensed to practice dentistry. Each dentist must be licensed in his own right, and he has no right to have practice with him unlicensed persons.

Yours very truly,

FRED H. DAVIS,
Attorney General.

LANDS—PROCEDURE TO PROTECT

January 14, 1931.

Dear Sir:

This is in acknowledgment of your letter of January 9th relating to the above subject.

What you refer to is mainly a civil trespass for which you will have to seek redress in the civil courts by bringing a suit for damages against the parties who are guilty of this trespass. While our law does provide that criminal proceedings may be taken against willful trespassers, criminal proceedings provide little remedy for the injured land owner. Your best remedy is to procure an injunction against the trespasser to stop future trespass and to sue for damages for trespasses that have already occurred.

A suit in the Federal court usually has the effect of halting such conduct. You will readily understand that in Florida as elsewhere a man must do something to protect his own property in cases of this kind.

Yours very truly,

FRED H. DAVIS,
Attorney General.

BANKS AND TRUST COMPANIES—REQUIREMENTS FOR VOLUNTARY LIQUIDATION

January 15, 1931.

Dear Sir:

This will answer your letter of January 14th asking my opinion as to what time the notice referred to in Section 6110, Compiled General Laws, relating to the voluntary liquidation of banks should be published. That is, whether it should be published immediately after the vote is taken to go into liquidation, or at any time within the three years which a bank has to wind up its affairs.

In answer to your inquiry I will state that the statute has generally been construed as requiring the publication of the notice to be made as soon as convenient after the vote is taken to go into voluntary liquidation, and after the Comptroller has been furnished with a full and complete detailed statement of the affairs of the bank or banking company as required by Section 6111 and the Comptroller has indicated his acceptance of such report as being in compliance with the statute.

In other words, a bank desiring to go into voluntary liquidation may do so by a vote of its stockholders owning two-thirds of its stock, and upon making a report of the affairs of the bank to the Comptroller and securing his approval in connection therewith, after which the notice required by Section 6110, Compiled General Laws, is required to be published for a period of two months in order that all those who have an interest in the liquidation of the bank may be advised of the change in the bank's status and take appropriate proceedings to protect their interests, whatever they may be.

While the statute prescribes no definite time for beginning the publication of this notice, it is obvious that it should not begin prior to the time the Comptroller receives and approves the statement furnished him under Section 6111, nor should it be deferred until such a late date as to amount to an unreasonable postponement equivalent to an abandonment of the original intention to liquidate as voted for by the stockholders.

Yours very truly,

FRED H. DAVIS,
Attorney General.

DOPE FIEND—VALIDITY OF CONTRACT SIGNED BY

January 15, 1931.

Dear Sir:

This answers your letter of January 14th on the above subject.

The mere fact that a man is a dope fiend does not in and of itself render a contract signed by him invalid. The only thing that would invalidate the contract would be a showing that while the contract was in process of being negotiated the dope fiend was so under the influence of the dope that he did not understand what he was doing. In that case the contract might be held

to be subject to being voided by the dope fiend as soon as he recovered his right mind and found out that he had done something which ordinarily he would not have done if he had not been influenced by dope.

In cases of this kind, however, it would be the duty of the dope fiend upon finding out his error to immediately notify the other party and disaffirm his contract. Otherwise, he would be deemed to have ratified that which was originally unenforceable.

Yours very truly,

FRED H. DAVIS,
Attorney General.

BLUE SKY LAW—CONSTRUCTION

January 17, 1931.

Dear Sir:

This is in answer to your letter of January 12th regarding the above law.

I might advise that our Florida blue sky law has been construed ever since its passage by the Attorney General in office for the time being and by the Comptroller not only as covering original stock issues floated by a company as a part of its own organization, but as covering any stocks or bonds, notes or other securities, which a corporation attempted to dispose of outside of the county where its principal office is located.

To have held otherwise would simply have narrowed the Florida "blue sky" law to such an extent that it would have amounted to nothing. All a corporation would have had to do to evade it would have been to transfer its stock to some other corporation to sell, and the blue sky would not have been applicable.

There is just as much opportunity for defrauding the public in selling securities of old companies as there is in selling securities of new companies. The most prolific avenue for defrauding the people at present which is being attempted to be carried out is through the so called "investment trusts," none of which so far have been licensed to do business in Florida.

The phrase "its stocks, bonds, notes or other securities" used in the Act has been construed to mean any stocks, bonds, notes or other securities which "it" had for sale, even though the securities were securities originally issued by some other corporation. I might add that transactions by mails or through the banks have never been considered as being under the jurisdiction of the Florida Blue Sky Board. Therefore, insofar as such transactions are carried out through the local banks of Florida or by mail, the Blue Sky Board claims no jurisdiction, even if it might technically have such.

Yours very truly,

FRED H. DAVIS,
Attorney General.

MUNICIPAL REGULATIONS— IN RE SPECIAL BENEFIT TAXES—
PLUMBING

January 17, 1931.

Dear Sir:

This is in answer to your letter of January 5th regarding the above subject.

Insofar as taxes for public improvements are concerned, the courts have decided that anything which benefits the community at large is a benefit to anybody who lives in the community, and therefore a tax to realize such benefit is warranted.

Referring to that part of your letter which relates to plumbing licenses, I beg to advise that under the peculiar legal system in Florida each city and town is given the privilege by special charter of doing pretty much as it pleases. In fact, all cities in Florida are little principalities in themselves, which have the right to pass laws wholly at variance or beyond the scope of general State laws.

The control of such cities is entirely in the Legislature.

Yours very truly,

FRED H. DAVIS,
Attorney General.

MUNICIPAL CORPORATIONS—RIGHT TO USE PORTION OF
SINKING FUND TO PAY INTEREST COUPONS

January 19, 1931.

Dear Sir:

This is in answer to your letter of January 9th on the above subject.

The question presented is whether or not the city commission of a municipality is authorized to spend money or any portion thereof now in a bond sinking fund by using the same to pay the interest coupons on various bond issues which could otherwise not be made except by the use of the sinking fund.

I regret to advise that I see no way in which this kind of an expenditure can be justified in law. The whole theory of a sinking fund is that it is a trust fund created for the benefit of the bond holders and is to be applied solely to the retirement of the principal of the bonds. All money placed in a sinking fund from the time it is placed in such fund ipso facto gives rise to a property right in same to all bond holders who are holders of outstanding bonds. Persons or officials having control of a sinking fund are deemed trustees thereof for the benefit of the bond holders and have no authority to use the same for any purpose except applying on the principal of the bonds without the consent of the bond holders.

The payment of interest is not a proper charge to be paid out of a sinking fund. The principles of law upon which *Harrell vs. Woodbury*, 56 So. 297.

was decided would control in a case of this kind. While no bond fund was there involved this case makes it clear that tax moneys raised for particular purposes must be used for those purposes and cannot be used for anything else. This is especially true in the case of sinking funds.

Yours very truly,

FRED H. DAVIS,
Attorney General.

AUTOMOBILES—SALE FOR STORAGE CHARGES

January 19, 1931.

Dear Sir:

The law does not give a garage man a statutory lien for storage charges which will enable such garage man to sell a car for storage charges without legal process, unless such garage man at the time of storing the car makes a contract with the person storing the same, under which it is agreed that the car may be sold for unpaid storage charges. This contract is usually printed on a form of claim check, part of which is delivered to the automobile owner and a part kept by the garage man, thereby making a completed contract similar to that which is made when a railroad company issues a bill of lading to a person having freight.

In your letter you do not state whether or not you have such a contract. If you did not, I am of the opinion that you will have to get process from some court there in order to sell the cars and give a good title. If you did have such a contract, then you can sell the cars in accordance with whatever the contract may provide. The Legislature should really pass some law regulating this subject. So far it has not done so.

I have several times advised that garage men should have their claim checks so printed that a contract will exist which will enable them to enforce their claims without legal proceedings. This can be easily done by printing on the back of the ticket, "it is agreed between the parties that in the event the car is not claimed" in so many days that the garage man may sell it for storage charges and make a bill of sale for same either at public or private sale.

Yours very truly,

FRED H. DAVIS,
Attorney General.

SMALL LOANS—PERMISSIBLE RATE OF INTEREST

January 19, 1931.

Dear Sir:

This is in answer to your letter of January 8th regarding the above subject.

Under the laws of Florida companies may obtain a special license permitting them to charge a rate of interest on small loans of less than \$300 not to exceed 3½% per month, which interest shall not be payable in advance or com-

pounded, and shall be computed only on unpaid balances. Any person who violates this law is subject to a fine of \$500 and six months imprisonment for such violation. He will also find himself unable to enforce the payment of the loan in the courts.

In this connection it must be remembered that the foregoing law only applies to those companies which have a special license to do a small loan business. Where the special license for doing a small loan business does not exist, then the highest rate of interest which may be charged is 10% a year.

Yours very truly,

FRED H. DAVIS,
Attorney General.

AUTOMOBILE LICENSE TAGS—IN RE PROCURING FROM
COUNTY OTHER THAN COUNTY OF RESIDENCE

January 19, 1931.

Dear Sir:

This is in answer to your letter of January 9th on the above subject.

In so far as ad valorem taxes are concerned, the law does not permit an automobile owner to leave the county where he usually resides and give in his automobile in some other county for the purpose of paying ad valorem taxes at a lower rate than he would have to pay in his own county. If this has been done in any case, the owner of the automobile who has done this will receive no protection from being forced to pay the taxes again in the county where they should have been paid, even though he has already obtained a license tag on the strength of taxes illegally paid in another county.

I realize that quite a great deal of this has been done, and in some instances there may have been some excuse for it. As for example, where a man has moved from one end of the State to another and does not want to send back to the county from which he moved in order to get a tax receipt.

At the same time, a wholesale practice of automobile owners going from their own counties into adjoining counties to secure a reduction in ad valorem taxes is not only against the law, but will simply result in such owners being compelled to pay the taxes again in the counties from which they went in the event that the tax collectors of their counties of residence see fit to have their cars levied upon to satisfy taxes lawfully assessed in the counties where the cars were usually kept.

If a car has once been lawfully assessed and put on the books of Citrus County a similar assessment made and paid in Hernando or any adjoining county might enable the man to get a tag, but it will not exempt the car from

being levied on to satisfy the tax in Citrus county, thereby compelling the owner to pay a double tax on the same car.

I make this explanation in order that all may be advised as to the possible consequences of pursuing the practice which you refer to in your letter.

Yours very truly,

FRED H. DAVIS,
Attorney General.

AUTOMOBILE LICENSE TAGS—DISTRIBUTION OF PROCEEDS

January 21, 1931.

Dear Sir:

This is in answer to your recent communication regarding the above subject, receipt of which has been previously acknowledged.

On looking into the matter, I find that Section 1304, Compiled General Laws, provides that "25% shall be set aside as a State aid fund to be used by the board of county commissioners for the purpose of construction and maintenance of county roads, and the same shall be apportioned to the several counties in proportion to the auto license tax collected from each county."

I find that since the law provides that the money shall be distributed in proportion to the amounts "collected" in each county, that it has been the uniform practice of the Department to remit to the county where the money for the license tag was "collected" the 25% referred to, regardless of where the owner of the automobile, for which the tag was procured, resides.

It seems that there are quite a number of tags issued every year, where the owner gives no Florida address or perhaps has none. The 25% of this money goes to the county where the tag is issued. I am informed that it would be an almost impossible task for the Department to go through the various applications and pick out the place of residence of the licensees, and that distributing the money according to the place where it is "collected" in fact is a practical necessity.

It would seem that the only remedy for a situation of this kind is to have the Legislature so amend the law as to prohibit any motor vehicle owner from obtaining a tag except from an agency in the county where the owner resides. Or it might be provided that wherever an application is made in one county, which shows residence of the owner in another county, that in such case a special segregation of the money should be made and distribution carried out accordingly.

Yours very truly,

FRED H. DAVIS,
Attorney General.

ADVERTISING, LEGAL—RIGHT OF COUNTY OFFICIAL TO RECEIVE COMMISSIONS

January 21, 1931.

Dear Sir:

This will answer your inquiry of January 19th on the above subject. Section 7486, Compiled General Laws, reads as follows:

"It shall be unlawful for any officer, State, county or municipal, or any public appointee, or any deputy of any such officer or appointee, to exact or accept any reward, compensation, or other remuneration other than those provided by law, from any person whatsoever for the performance, nonperformance or violation of any law, rule or regulation that may be incumbent upon the said officer or appointee to administer, respect, perform, execute or to have executed. Provided that nothing herein shall be construed so as to preclude a sheriff or his deputies, city marshal or policeman from accepting rewards or remuneration for services performed in apprehending any criminal."

The penalty for violating the foregoing statute is imprisonment in the State Prison not exceeding ten years or fine not exceeding \$1000, or both such fine and imprisonment.

Another statute provides that the practice of receiving commissions and the like shall be deemed a misdemeanor in office, and punishable under Section 7489. It is clear that the effect of the above Sections of the law is to prohibit any county officer from accepting commissions on legal advertising handled officially by him and required to be published in a newspaper.

The law contemplates that officers shall treat all persons alike, and that in performing their official duties they shall receive no compensation from any source except such as the law fixes or provides.

Yours very truly,

FRED H. DAVIS,
Attorney General.

BANKS, DEFUNCT—LIABILITY WITH REGARD TO CHECKS

January 21, 1931.

Gentlemen:

This is in answer to your letter of January 14th regarding the above subject.

In the case of *Edwards vs. Lewis*, 124 So. 746, the Supreme Court held that where one bank sends items for collection and remittance to another bank, and the collecting bank makes collections and remits to forwarding banks its own checks on other banks for the amounts collected, but the checks are not paid in due course because of the failure of the collecting bank after making the collections and after remitting the checks, but before the checks

are paid, and there is no commingling of funds by consent and no reciprocal accounts or deposits between the two banks, the collecting bank having account with a balance to its credit with the forwarding bank, but forwarding bank having no account with collecting bank, that in such case the forwarding bank is entitled to a preference in payment by the receiver of the collecting bank for the collections made.

In short, the holding is that where a bank makes collection of money as agent for another, it becomes a trustee for the money collected and the trust status is not destroyed merely because it uses its own check upon another bank as a means of making the remittance.

Each case, however, depends upon its own peculiar facts in matters of this kind.

Yours very truly,

FRED H. DAVIS,
Attorney General.

MUNICIPAL CORPORATIONS—PROCEEDINGS TO SURRENDER FRANCHISE

January 22, 1931.

Dear Sir:

Section 3082, Compiled General Laws, provides that any city or town incorporated under the laws of Florida may surrender its franchise in accordance with the terms of that Section.

There has always been some doubt as to whether Section 3082 can be applied to any city or town which has a special legislative franchise as distinguished from a charter granted under the general law relating to cities and towns. This matter was recently before the courts in Orange county, and is now in the Supreme Court awaiting a decision on this point.

Personally, I am inclined to believe that Section 3082 will be held applicable to cities and towns having a special charter, as well as a general charter. The argument to the contrary is based upon the fact that a special charter is a legislative act, and that a legislative act can only be repealed by the Legislature itself. There is undoubtedly some force to this contention.

At the same time, the contention overlooks the fact that a legislative charter, while a legislative act, is nevertheless a charter, and that it may be said to have been granted subject to the terms of the general law. Unquestionably, if a franchise is surrendered in the manner provided by Section 3082 a new town can be incorporated for a portion only of the territory which was formerly a part of the old town.

The safest and most practical way to abolish a town which has special paving assessments and other extraordinary features connected with its city government would be to have a special act passed at the 1931 session. If Section 3082 is applicable to a town having a special charter, unquestionably, all obligations which are legal obligations of the town, such as special assess-

ment bonds and the like, would have to be administered as provided in Section 3084 to prevent impairment of the obligations under contract.

Under the recent holding of the Supreme Court the town's guaranty on paving assessment certificates is construed as a general obligation of the town, and therefore would be a debt which would have to be paid as such. It would appear that the assets of the town, such as water works, fire apparatus, town hall and the like, would be held under Section 3084 to be disposed of for the benefit of the creditors.

Yours very truly,

FRED H. DAVIS,
Attorney General.

FARM AND GROVE PRODUCTS—RIGHT OF PRODUCER TO MARKET FREE OF LICENSE

January 26, 1931.

Dear Sir:

Section 21 of Chapter 14491, Acts of 1929, Laws of Florida, reads as follows:

"That all farm and grove products and products manufactured therefrom, shall be exempt from all forms of license tax, State, county and municipal, when the same is being offered for sale or sold by the farmer or grower producing the said products."

The Florida statute, of course applies to the *farmer or producer* (which would include a grove owner) and gives them the right to directly market what they produce without being burdened with a license.

The State of Georgia once had a law which provided a license on those who sold or marketed farm products, whether the producer or otherwise. In consideration of the Florida statute above cited, the Georgia Legislature at its 1929 session was induced to repeal its statute, and so far as I am advised the Georgia law is now silent on the subject of licenses, insofar as the *original producers* are concerned.

The Florida law has been construed as giving Georgia producers the right to sell their products in Florida free of license, and I assume that the Georgia law is being construed likewise. The main trouble which will be encountered, if at all, will be with local municipal governments which usually adopt their own peculiar regulations on matters such as this, and usually do so without very much regard to constitutional or other limitations.

I am taking the matter you refer to up with the Attorney General of Georgia, and will advise you later concerning the same.

Yours very truly,

FRED H. DAVIS,
Attorney General.

COLLECTING AGENCIES—LICENSE TAX

February 5, 1931.

Dear Sir:

Liability for license is usually determined by the predominant nature of the business for which a license is sought. Some kinds of business are of such nature, that they might be licensed under any one of several laws, depending upon the predominant characteristic of the occupation.

From your statement of what you intend to do it appears to me that your business would probably fall under the terms of Section 1055, Compiled General Laws, as a claim or collection agency, for which a license tax of \$25.00 for the State and \$12.50 for the county is required.

Yours very truly,

FRED H. DAVIS,
Attorney General.

LIFE INSURANCE POLICY—DISPOSITION OF PROCEEDS UNDER
SEC. 7065 C. G. L.

February 5, 1931.

Dear Sir:

In reply to your letter of January 14th regarding the above matter, I beg to state:

That in an opinion I gave Mr. Knott I stated that I believed the proceeds of policies of life insurance falling within the provisions of Section 7065, Compiled General Laws, which inure "only to those children who are surviving at the time of the insured's death, and that the representatives or heirs of children who have predeceased the insured have no legal interest in the proceeds of such life insurance policy."

I was not able to find any statute or any court decision on a statute exactly like ours. My opinion was based upon the usual and ordinary meaning of the word "children" such as was pointed out in the case of *Martin vs. Modern Woodmen of America*, 97 N. E. 693, where the court said that the word "child" in its popular significance means a son or daughter, or a descendant in the first degree and not a grandchild.

I see nothing in Section 7065 which indicates an intention that the word "children" as used therein was intended to be used in any other sense than its ordinary one. Furthermore, it is a recognized fact that Section 7065 was enacted so as to enable claims on insurance policies against insurance companies to be promptly settled and to fix the precise parties to whom the money should be paid.

It was evidently the intention of the Legislature to have the money payable to the child or children and husband or wife of the deceased who were in being and alive at the time the claim accrued.

Yours very truly,

FRED H. DAVIS,
Attorney General.

BOATS—TAXATION AS PERSONAL PROPERTY

February 6, 1931.

Dear Sir:

This will acknowledge receipt of your letter of January 26th regarding the above subject.

Under Section 896, Compiled General Laws, boats and vessels are defined as personal property and as being subject to taxation as such in the State of Florida. However, under Section 893, Compiled General Laws, only personal property belonging to persons residing in this State is subject to taxation here, unless the property is usually kept here the year around irrespective of the situs of the residence of the owner.

It appears to me that a matter such as you mention could easily be handled with your local tax assessor. Certainly a visitor in Florida who is a nonresident of the State and who only stays here two or three months in the year would not be subject to having his boat taxed in Florida, merely for paying the State a visit, even though the visit might last several months.

The maxim *mobilia sequuntur personam* applies to a certain extent in cases of this kind. If a person lives in Florida and was a resident here on January 1st of the tax year, it is presumed that his personal property was here also on that date, and it would therefore be subject to taxation in Florida. But where the person lives in another state and has no Florida residence, I do not think it would be within the power of the State of Florida to tax personal property not physically within its jurisdiction on the date fixed by law for the ascertainment of tax liability, namely, January 1st.

Yours very truly,

FRED H. DAVIS,
Attorney General.

GASOLINE—LIABILITY OF INTERSTATE SALE TO STATE TAX

February 6, 1931.

Dear Sir:

This refers to your letter of February 3rd on the above subject.

My letter of January 22nd on the point about which you write should be understood to mean the following: Where a contract is made for the sale and delivery of gasoline, but the contract as made leaves it to the option of the Standard Oil Company as to how, when and where the contract may be fulfilled by the delivery of the gasoline, then such sale is taxable in the State of Florida. However, when a contract is made which specifically and definitely requires that gasoline which is at the time located in another state be used to fulfill the contract by being delivered under it to the contracting party, and there is no option given to the Standard Oil Company but to deliver the identical gasoline referred to in the contract, which is at the time located in another

state, then the latter transaction would be one in interstate commerce and the gasoline would not be subject to taxation.

It is not the fact that gasoline is actually delivered from one state to another that makes the sale thereof interstate commerce. It is the fact that the sale itself contemplates and requires a delivery of a commodity from one state to another, in order to complete the sale, that fixes the character of the same as interstate commerce. Where an option exists either to deliver from another state or from the same state the interstate character of the transaction of sale which is the subject of the tax is thereby destroyed.

Yours very truly,

FRED H. DAVIS,
Attorney General.

LAWYERS—OCCUPATIONAL LICENSE TAX REQUIRED

February 9, 1931.

Dear Sir:

It has been held for a number of years by the Comptroller's office and by the Attorney General under previous administrations that all lawyers who were licensed as such and who did any work at all in connection with their lawyer's license were required to pay the tax provided for by Section 1185, Compiled General Laws.

In view of the long settled construction placed upon the statute by my predecessors, I would not feel warranted in undertaking to make a contrary ruling at the present time.

It appears that Section 1185, Compiled General Laws, may have been superseded by paragraph (i), Section 15, Chapter 14491, Acts of 1929, although this is not certain in view of Section 31 of Chapter 14491. Of course, if a lawyer is working in a law office as a stenographer or at some other work which he could carry on irrespective of his law license, and the fact that he had a lawyer's license would not enter into the work in any way, it is clear that the tax would not be collectible. But if he acts in any respect or holds himself out as a licensed lawyer, even though only in connection with limited functions, in a law office, it appears to me that such would be considered a practice of law which would render the lawyer liable for the tax.

In short, to escape liability for the tax the work done must amount to a complete abandonment of franchise conferred by the license.

Yours very truly,

FRED H. DAVIS,
Attorney General.

JUSTICE OF THE PEACE—NOT AUTHORIZED TO APPOINT A
CONSTABLE

February 9, 1932.

Dear Sir:

Replying to your favor of the 7th instant, permit me to say a justice of the peace has no authority to appoint a constable. Where the constable of the district is unable to act, and it is impossible to procure the services of the sheriff or a deputy sheriff, the justice may appoint an officer to serve civil process only.

Yours very truly,

CARY D. LANDIS,
Attorney General.TAXES, DELINQUENT—CONSTRUCTION OF LAW IN RE PAY-
MENT WITH BONDS OR DELINQUENT COUPONS

February 9, 1932.

Dear Sir:

Replying to your favor of the 5th instant, permit me to say Senate Bill No. 852, which is Chapter No. 15054, Acts of 1931, authorizes the governing board or board of county commissioners, or other constituted authority of each county, district or municipality of this State, to provide by resolution that bonds, delinquent interest coupons, or other due or past due obligations of such counties, districts, or municipalities, shall be receivable at par in the redemption of lands within such counties, districts or municipalities, from tax sales for unpaid taxes, provided that such unpaid taxes were levied for the year 1929 and prior years, and tax certificates therefor were issued and are held by the State or by the county, district or municipality subject to redemption.

It will be seen from the provisions of the Act as quoted above, that taxes levied subsequent to 1929 are not subject to payment with bonds or delinquent interest coupons, or other due or past due obligations of counties, districts or municipalities.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SHOWS—WHEN EXEMPT FROM LICENSE TAX

February 10, 1931.

Gentlemen:

I regret to advise that in response to your telegram of February 6th that there is no law which exempts a tent show, minstrel, medicine show, or similar exhibition from a license merely because it exhibits under the auspices of some civic organization such as the American Legion, Women's Club, Chamber of Commerce, etc.

Certain forms of entertainment when held under Section 1247, Compiled General Laws, and falling within the purview of that Section might be given for charitable purposes without a license. But any show which would require a license under Section 1244, 1245, 1246 would not become exempt therefrom merely because it showed under the auspices of some civic club or organization.

In some instances these civic organizations have taken out licenses under Section 1080, Compiled General Laws, for an amusement park, in which event the law has been construed as permitting the organization in question to hold any show or entertainment on the location licensed for the one annual license provided for in that Section.

Yours very truly,

FRED H. DAVIS,
Attorney General.

DUE BILLS—SCHOOL TEACHERS CANNOT USE IN PAYMENT OF TAXES

February 10, 1931.

Dear Sir:

I regret to advise in response to your letter of February 5th that due bills issued by a county board of public instruction cannot under the Constitution and laws of Florida be received by the public officials in payment of taxes.

In this respect our laws differ from the laws of Mississippi and other States. In Florida a special form of tax is levied to support the schools and to permit a due bill to be received in payment of taxes would have the effect of depleting the revenue which goes to the State and county for the benefit of discharging county school due bills, which cannot be done.

Yours very truly,

FRED H. DAVIS,
Attorney General.

ALCOHOL—PRESCRIPTIONS BY PHYSICIANS ONLY

February 10, 1931.

Dear Sir:

Section 7605, Compiled General Laws, provides that alcohol shall not be sold for medicinal purposes except upon a written and signed prescription of a physician regularly admitted and licensed to practice his profession in this State, who before writing such prescription shall either have a professional knowledge of the case or shall have made an actual examination of the person for whom the prescription is issued. No prescription shall be filled except by a pharmacist regularly licensed to practice his profession in this State, and said prescription is required to be in substance in the following form:

"State of Florida,
County of

I,, a regularly licensed and practicing physician under the laws of said State, do hereby certify that I have either a professional knowledge of the case, or that I have examined patient in my charge, whose address is and I do hereby prescribe for use of said patient alcohol. And I further certify that the use of such alcohol is necessary to alleviate or cure the illness or disease of which said patient is suffering.

.....M. D."

Such prescription can only be filled upon the day it is issued or upon the succeeding day, and cannot be filled more than once nor can any one person have more than one prescription filled in any one day.

The above in substance is the law of this State relating to prescriptions of alcoholics by physicians engaged in the practice of medicine in Florida.

Yours very truly,

FRED H. DAVIS,
Attorney General.

BONDS, FINE AND COST—CONSTRUCTION OF STATUTE

February 12, 1931.

Dear Sir:

Answering your letter of February 9th on the above subject, I beg to advise that former Attorney General Rivers Buford construed Sections 8426 and 8427 as creating an absolute liability on the part of the bondsmen to pay the fine and costs under a fine and cost bond given by them, and that it was not permissible nor proper for the bondsmen to "come off" the bond.

In other words, having once signed the bond their liability to pay the fine and cost becomes fixed. The law was further construed as permitting the arrest and imprisonment of the defendant, so long as the payment of the fine and cost was in default by the bondsmen, but such arrest and imprisonment and even a complete service of the sentence would not relieve the bondsmen from liability for payment of the fine and costs.

My own opinion about the matter agreed with the interpretation put upon the statute by Judge Buford. My recollection is that the Supreme Court recently decided a matter along the same lines, and held substantially as above stated. If the bondsmen in a case like this could be relieved at all after the bond is once made, it could only be done by the making and substitution of an entirely new bond within the ninety day period.

Yours very truly,

FRED H. DAVIS,
Attorney General.

DEATH, PRESUMPTION OF—STATUTE RELATING TO

February 20, 1931.

Dear Sir:

Section 5579, et seq. Compiled General Laws, authorizing the granting of administrations on estates of persons believed to be dead on account of absence for seven years or more, from the place of his last domicile within Florida.

Trusting this answers your inquiry of February 14th, I am

Yours very truly,

FRED H. DAVIS,
Attorney General.

BUILDING AND LOAN ASSOCIATION—IN RE WITHDRAWAL INVESTING STOCKHOLDER

March 2, 1931.

Dear Sir:

Answering your letter of February 24th I beg to advise that under the laws of Florida any investing stockholder in a building or loan association whose stock is unpledged for a loan, wishing to withdraw from the association, shall be entitled to receive the full amount of dues paid in upon the stock, so to be withdrawn, together with all declared unpaid dividends thereon, plus all fines and other charges, including a pro rata share of the losses, if any, provided that one-half of the funds received by the association in any one month shall be applicable to the payment of withdrawing stockholders, if required, but no greater proportion need be used unless otherwise ordered by the board of directors.

When the demands of withdrawing stockholders exceed the funds applicable to their payment, they are required to be paid in the order in which their notices of withdrawal are filed with the association.

Yours very truly,

FRED H. DAVIS,
Attorney General.

TAX CERTIFICATES—SALE OF

March 4, 1931.

Gentlemen:

This answers your letter of February 26th on the above subject.

It appears to be the intention of the statute and it has been so construed by the State Department with the approval of this office, that insofar as selling certificates is concerned, at the present time the certificates must await the day on which the sale is to begin and must there be put on sale to the highest bidder for cash, no bid to be accepted for less than the face amount of the taxes, under the instructions of the Comptroller.

Everything equal the owner will be given the preference to purchase his own certificate, but otherwise his certificate will have to be sold to the buyer who will give the most for it. Delinquent tax payers in this State have been given the most lenient concessions in every case. I do not see how any further concessions can be extended if the law is to have any application at all.

Referring to the second paragraph of your letter, it would appear that the interpretation placed upon the law by the local authorities is correct. No tax certificates are to be sold except those for the year 1927 and prior years, and then only when the certificate is still held by the State.

Insofar as the 1929 certificate is concerned, there is no authority by which such certificate can be redeemed without interest or penalties, in view of the fact that it does so within the classification of certificates which are to be sold, and is not a subsequent omitted tax.

Yours very truly,

FRED H. DAVIS,
Attorney General.

ELECTIONS—SPECIAL TAX SCHOOL DISTRICT—INTERPRETA- TION OF LAW

March 6, 1931.

Dear Sir:

Section 708, Compiled General Laws, requires that elections shall be held in special tax school districts biennially "to determine who shall be trustees for the next succeeding two years, and the number of mills of district school tax to be levied for each of said years."

Insofar as the election of trustees is concerned, it will be noted that the language of the statute is that the election shall "determine" who shall be trustees for the next succeeding two years.

Presumptively, this language refers to an election of trustees for the ensuing two years, but it does not appear to be solely limited to the affirmative election of trustees. Where three trustees are already in office they would naturally continue to hold office until successors are elected and qualified.

This is clearly implied from Section 708 if not specifically stated therein.

Consequently, where the election is held and the result has been found to have "determined" the millage with no election of trustees resulting, one view of the law might be that such a result could be regarded as a "determination" by the people that the millage should be as voted, and that the particular trustees who were in office should continue to hold over until the next biennial election.

The fact that the people did not "determine" that any trustees should be elected by giving them sufficient votes to elect them, might be regarded as a determination that the old one should remain in office and continue to function.

Another view might be that under Section 706, since special tax school district elections are to be held in accordance with the general law, that paragraph 1 of Section 254 would apply so as to authorize the holding of another election for the selection of trustees only.

Yours very truly,

FRED H. DAVIS,
Attorney General.

HOTELS—IN RE PROTECTION OF GUESTS

April 9, 1931.

Dear Madam:

Your letter of the 3rd instant addressed to State Hotel Commissioner has been referred to this office for reply.

We note what you say regarding the burning of the St. Johns Hotel in your city, and we note that there were several guests injured and that they were taken to the Flagler Hospital.

You state that you wish to learn what the State law is concerning the protection which hotels must take for their guests against fire and other calamities, and in reply we will state that the law requires hotels to be equipped with fire extinguishers and with fire escapes, and there are several other measures too numerous to mention, for the protection of guests against fire hazards. We gain the impression from your letter that you have been informed that the State of Florida, through the State Hotel Commissioner, pays the expenses of guests, who may be injured while guests of a hotel that may burn in this State. There is no provision in the law which would authorize the payment by the State or any State Department of such expenses. If the guests of the hotel have a claim against anyone for redress, it would be against the operators of the hotel.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BASEBALL—UNLAWFUL TO PLAY ON SUNDAY

April 9, 1931.

Dear Sir:

Replying to yours of the 6th instant, in which you wish to be advised if it is lawful to play baseball on Sunday in the State of Florida, permit me to say Section 7653 of the Compiled General Laws of Florida reads as follows:

"Whoever engages on Sunday in any game or sport, such as baseball or football, etc., whether as player, manager, director or otherwise shall be

deemed guilty of a misdemeanor and shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment."

We are advised that the statute forbidding playing baseball on Sunday is not generally enforced.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MUNICIPAL ORDINANCE—FINE OF \$500 WITHIN LAW

April 13, 1931.

Dear Sir:

Replying to yours of the 9th instant, in which you request this office to advise you as to whether or not a municipal ordinance is valid which carries the sentence of \$500 or ninety days in the city jail, permit me to say that Section 2949, Compiled General Laws, provides for a fine by municipal court not to exceed \$500, or imprisonment for a period of not more than sixty days.

Yours very truly,

CARY D. LANDIS,
Attorney General.

GASOLINE—WHEN NOT LIABLE FOR STATE TAX

April 16, 1931.

Dear Sir:

This acknowledges receipt of yours of the 14th instant, enclosing copy of contract between the Richfield Oil Corporation and Pan American Airways, Inc., regarding the purchase of gasoline used by Pan American Airways, Inc., in its airways out of Miami, Florida. I have noted also the statement of R. I. Dunten, Division Manager of Pan American Airways, Inc., under date of April 14th, 1931, as to the method of handling this gasoline between the refinery located in California and the storage tanks located in Miami, Florida.

So long as your company operates under the contract mentioned and in the method stated, to-wit: Purchasing the gasoline f.o.b. at the refinery in California, shipping the same direct to and placing the said gasoline in your own tanks and without the company mingling it with any other gasoline and using it exclusively in your airplane operations to foreign ports, it is my opinion that your company is not liable either for the sales tax or storage tax to the State of Florida.

Yours respectfully,

CARY D. LANDIS,
Attorney General.

TAX CERTIFICATES, FORECLOSURE, PROPER PARTIES

April 18, 1931.

Dear Sir:

Replying to your letter of the 16th instant, it is my opinion that the Clerk of the Circuit Court would not be either a proper or a necessary party in such foreclosure proceedings.

The foreclosure is authorized by the statutes, Chapter 14572, Laws of Florida, 1929, for and on behalf of the State of Florida and the county. The county commissioners in employing an attorney should designate the particular certificates that should be foreclosed, and this should be a matter of record in the minutes in the Board of County Commissioners, and is within the knowledge of the Clerk of the Circuit Court. Up to the time of the institution of the suit, I take it that a redemption can be had without paying any portion of the costs and the fees incident to the foreclosure.

When the foreclosure bill is filed, it is a part of the records of the Circuit Court and the Clerk has taken notice of the amounts of certificates affected, and if thereafter and before the final decree and sale, redemption is had, he, of course, should collect all amounts due including a portion of the costs of foreclosure.

Inasmuch as the foreclosure is had on behalf of the county as well as of the State, it is my opinion that the Clerk of the Circuit Court would be an improper party.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.NOTARY PUBLIC—NO PENALTY ATTACHED FOR FAILURE TO
AFFIX DATE COMMISSION EXPIRES

April 20, 1931.

Dear Sir:

Replying to yours of the 17th instant, I beg to advise that there seems to be no penalty attached where a notary public through oversight omits to attach to his signature, "My commission expires.....".

The section of law which covers this situation is as follows:

"485. (419) *Must State Time of Expiration of Commission.*—It shall be the duty of every notary public in the State of Florida to add to his or her official signature to any acknowledgment taken before, or certificate made before him or her, relating to or affecting the sale, mortgage, transfer or assignment of any interest in and to any real or personal property,

a statement of the time of the expiration of his or her commission as such notary public in words and figures as follows: "My commission expires....." (Herein insert the date when commission expires.) (Ch. 5218, Acts 1903, Sec. 1.)"

Yours very truly,

CARY D. LANDIS,
Attorney General.

WAR VETERAN—WHEN ENTITLED TO \$1000.00 TAX EXEMPTION

April 24, 1931.

Dear Sir:

Replying to yours of the 21st instant, wherein you ask me to advise if a War Veteran who has lost a limb and is the head of a family can claim five hundred dollars exemption on real estate under Section 9, Article IX of the Constitution, and, also, claim exemption to the amount of five hundred dollars on household goods and personal effects under Section 11 of Article IX, I beg to advise as follows:

It is my opinion that every person who is a bona fide resident of the State of Florida and has lost a limb, or who has been disabled by war or misfortune, is entitled to an exemption of tax on either real estate or personal property to the amount of five hundred dollars, and the same person, if he is a resident of the State of Florida and is the head of a family, is entitled, also, to an exemption from taxation on his household goods and effects to the amount of five hundred dollars.

In other words, the same person, if his situation meets the requirements of both of these exemptions as above stated, is entitled to both of these exemptions.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SMALL LOAN LAW—APPROVED BY CITIZENS

May 2, 1931.

Dear Sir:

Replying to your favor of the 30th instant I beg to advise that Florida does have a law authorizing the business of making small loans, to-wit: Chapter 10177, Acts of 1925.

We have no pamphlet publication of this Act, but I am having copied for you the first four sections of the act, to-wit: Sections 3999, 4000, 4001 and 4002, which probably give you the information you desire.

There has been no attempt to repeal this law, and it has served a large

class of people who during the present time of depression have been unable to procure loans from the regular banks. It is my opinion that the law is approved, after more than five years of experience with it, by both the bankers and our citizenship generally.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

PRISONER—CLIENT HAS RIGHT TO INTERVIEW

May 9, 1931.

Dear Sir:

Replying to yours of the 8th instant, I beg to advise that under the laws of Florida the Sheriff is in exclusive charge of all prisoners lawfully committed to the County Jail, subject, of course, to the right of the judge of the Court having jurisdiction of the prisoner to have the prisoner brought before his Court, and an attorney would have no authority to make any unreasonable demand with reference to interviewing a client who was in jail.

Every citizen when charged with crime has a right to confer with his counsel, but the Sheriff could require that such conference or interview should be at reasonable times and under reasonable conditions. I have never known any particular trouble to arise between a Sheriff and an attorney with reference to these matters for the reason that Sheriffs and attorneys usually are more or less interdependent, and each should work with the other with a view of facilitating all matters pertaining to people who are committed to prison.

You ask when a Sheriff would be justified in refusing an attorney to visit and confer with his client, and in reply would state that he would never be authorized to completely refuse an attorney this privilege, but in times of excitement over some heinous crime, or where to permit an interview might jeopardize the interests of the State in caring for the life or liberty of the prisoner, the Sheriff would be justified, for the time being at least, in refusing such a conference between the prisoner and his attorney.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BANK STOCK—IN RE ASSESSMENT

May 12, 1931.

Dear Sir:

Replying to yours of the 5th instant in which you request an opinion from me as to who is liable for assessment on State bank stock, and in which you state the hypothetical case, permit me to say that I gain the impression from your statement that the stock was sold on the bank's reopening and that the

seller would like to know if he would be liable for an assessment should the bank close the second time.

By referring to Section 4128, Revised General Statutes, it will be noted that the seller would be liable for any unpaid assessment for a period of six months after the date of such transfer to the purchaser. Of course, if the sale was bona fide and the purchaser did not contest the assessment against himself, even though called for within six months from the date of transfer, then in this event the seller would be relieved of any liability.

Ordinarily in the reopening of a bank, if an assessment is necessary and it usually is, those stockholders who cannot or who do not care to carry on with the reopened institution may surrender their stock, which stock is sold to other persons desiring to assist in the plan of reopening.

If your inquiry is based on facts such as these, then I am of the opinion that the person surrendering his stock would not be liable for another assessment, regardless of the length of time that might have elapsed between the reopening and the date of the second assessment.

Yours very truly,

ROY CAMPBELL,
Assistant Attorney General.

ELECTION—WRITING NAMES ON BALLOT LEGAL

May 16, 1931.

Dear Sir:

Replying to your favor of the 14th instant, as I understand it from your letter, your County School Board of Charlotte held an election for the purpose of electing three trustees for District No. 22; that the legal notice was given of such election; that no candidates had announced so that their names could be printed on the list, but that the voters qualified wrote in on the ticket the names of those whom they wished to vote for; this in my opinion constitutes a valid election; assuming, of course, that no fraud has been committed.

You state that some of your citizens feel that it is impractical to elect by writing the names on the tickets, and I do not disagree as to this, but the remedy is for the citizenship to have persons properly qualified and have their names printed on the ticket.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SHERIFF'S DEPUTY—AUTHORIZED TO MAKE ARRESTS IN ANY PART OF COUNTY

May 18, 1931.

Dear Sir:

Replying to yours of the 14th instant, in which you ask to be advised as to whether or not a deputy sheriff is authorized to make arrests in any part of a county in which he holds commission or is restricted to a given

district, permit me to say that the authority of the deputy in this respect is co-extensive with that of the Sheriff of the county, and, of course, you understand that the authority of the Sheriff extends throughout the county.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CHIEF OF POLICE—LAWFUL TO ACCEPT FEES FROM SHERIFF

May 18, 1931.

Dear Sir:

Replying to yours of the 15th instant in which you ask to be informed if a chief of police of a city who receives a salary may legally accept fees for making arrests, mileage, and commitment from Constables or Sheriffs for arrests made by him on behalf of Sheriffs or Constables of another county. In reply to this question permit me to say that we know of no statute which would prohibit the Sheriff or Constable paying the police officer for such services and we know of no statute which would make it unlawful for the police officer to accept such fee.

In reply to your second question in which you ask to be advised if it is necessary to have a warrant approved by the county judge or justice of the peace of the district in which the arrest is made, permit me to say that it is my opinion that such warrant should be approved by the county judge or justice of the peace.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WOMEN'S CLUBS—WHEN EXEMPT FROM TAXATION

May 21, 1931.

Dear Madam:

With reference to your request for an opinion as to the right of exemption from taxation of property belonging to Women's Clubs in the State of Florida I beg to advise as follows:

Section 1 of Article IX of the Constitution of the State of Florida provides that the Legislature "shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes."

In pursuance of the above section of the Constitution the Legislature has enacted into law what has become and known as Section 898 of the Compiled General Laws of 1927, which, among other things, with reference to the exemption of property of Women's Clubs, contains this language:

"All property in this State now owned and *exclusively used* by the regularly constituted *Women's Clubs* of Florida * * *" and also "used solely as their club houses or homes is hereby defined to mean such property as is contemplated by Section 1 of Article IX of the Constitution of Florida, and is hereby declared to be exempt from taxation * * *."

It is my opinion that all property when owned by Women's Clubs of the State of Florida, where it is used exclusively as stated in the law by such Women's Clubs as their club houses or homes for such functions as usually pertain to such clubs, is exempted from taxation.

The question frequently arises as to whether or not the different clubs waive their right to this tax exemption where they rent their property, or portions of it for private gainful occupations, and where this is done it is my opinion that the tax exemption right would be waived, and the property would be subject to taxation.

The question also arises frequently as to the club's right for tax exemption where the property or club house is rented to sororities or other clubs for holding dances, private entertainments, etc. In this case, where such entertainments and dances are held for more or less a quasi public purpose, or benefit, and no charge is made other than such as would be reasonable to take care of the wear and tear of the property, etc., in my opinion this would not be a waiver of the right to this tax exemption in behalf of the Women's Clubs.

As to this last question, it is largely a matter of practical application in each instance, keeping in mind that this property cannot be used for the purpose of private gain, but must be used exclusively for a club home, or a club house, and for those functions and purposes which are commonly known to be a part of the club house life.

Ordinarily, these questions do not arise in any degree of seriousness because the Women's Clubs, as a rule, are interested only in such functions and entertainments as are for the benefit of the community at large.

. Very respectfully,

CARY D. LANDIS,
Attorney General.

TAXES—PAYABLE ONLY IN MONEY

May 22, 1931.

Dear Sir:

Replying to your favor of the 21st instant, I beg to advise that there is no law making taxes payable in anything other than money, therefore, a town or county is within its lawful rights in refusing to accept a matured bond of its own issue as a set-off for taxes. In brief, the law is that all taxes are payable in money.

There has been some effort to obtain some legislation at this session authorizing towns under certain circumstances, and especially with reference to paving assessments, to permit and authorize towns to accept bonds in payment of taxes, but if any such bill has yet become a law, this office is not advised of it.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INSURANCE—REBATES IN FORM OF VARIOUS ARTICLES
CANNOT BE GIVEN WHEN ISSUING POLICY

May 22, 1931.

Dear Sir:

Acknowledging yours of the 20th instant, I beg to return your file herewith and in reply would state that just what you propose to do is more or less indefinite in my mind, however, I gather from your letter to the Honorable W. V. Knott, Insurance Commissioner, that your idea is to issue insurance policies and give to the person purchasing policy various articles, such as automobiles, radios, etc.

If I understand the proposition correctly, I am of the opinion that this would be a violation of Section 6225 of the Compiled General Laws of Florida, 1927, with reference to giving and accepting rebates. Such article or articles of substantial value would not only be an inducement to purchase insurance, but would also amount to a rebate on the price, for the reason that the insured could take such article and go out in the open market and sell it for cash and in this way procure a lesser rate on his insurance. It is possible that I am unable to gather sufficient from the brief files which you sent to me to enable me to determine just what you propose to do, but if I understand it correctly, I am clearly of the opinion that the proposition would be a violation of Section 6225, as above stated.

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

SMALL LOAN ACT—CONSTRUCTION

May 25, 1931.

Dear Sir:

My construction of Section 4016 of the Compiled General Laws of Florida, 1927, which was originally Section 19 of Chapter 10177, Laws of Florida, Acts of 1925, popularly known as the "Small Loan Act," is that a small loan business cannot be licensed in counties having a population less than forty thousand, taken from the 1925 or any subsequent census. This means,

of course, that persons lending money in counties of less than forty thousand population cannot lawfully charge the rate of interest permissible under the Small Loan Act.

The application for a license shall show the name and address of the residence and place of business of the applicant and each member of a co-partnership and each officer of a corporation; also the county and municipality, with street number, if any, where the business is to be conducted. This clearly indicates that there must be a license for every county in which such business is conducted, and I do not think one could be licensed to solicit orders in a county of less than forty thousand population according to the last census.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SUITS, FORCIBLE ENTRY AND DETAINER—JURISDICTION
CONFERRED BY CONSTITUTION

May 25, 1931.

Dear Sir:

In accordance with your request for my opinion as to the Legislature conferring jurisdiction on justices of the peace, with reference to forcible entry and detainer suits, would state that this jurisdiction is conferred by our Constitution upon our Circuit Court by Section 11, Article V; upon the county judge by Section 17, Article V; upon the Court of Record of Escambia County, Section 39, Article V; upon the County Court by Section 18, Article V; and, therefore, it is my opinion that the Legislature cannot confer this jurisdiction upon the justices of the peace.

In other words, the jurisdiction of forcible entry and detainer suits has been conferred by the State Constitution on the courts as above stated and this would exclude the Legislature from conferring this jurisdiction on any other court.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY OFFICERS—NOT PERMITTED BY LAW TO HOLD
TWO OFFICES

May 29, 1931.

Dear Madam:

Replying to your verbal inquiry of this date, in which you ask to be advised as to whether or not one holding the office of County Commissioner could at the same time hold the office of school trustee for a Special Tax School District, permit me to say a County Commissioner is a county

officer. Section 10 of Article XII of the Constitution of the State of Florida provides for the office of trustee or trustees of Special Tax School Districts, therefore, the office of County Commissioner and that of trustee of a Special Tax School District are both county offices, and it is my opinion, therefore, that one and the same person could not hold both offices.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CIRCUIT JUDGE—IMPEACHMENT CHARGES—METHOD OF PROCEDURE

May 29, 1931.

Dear Sir:

Replying to your request for an opinion as to how and in what manner charges against a Circuit Court Judge of this State should be conferred, I beg to advise you as follows:

A Circuit Judge, under the Constitution of the State of Florida, is not removable for misconduct by the Governor, but he is subject to impeachment charges leading to impeachment. These charges can be filed in the House of Representatives by some member in the form of a resolution, and, upon the adoption of the resolution, the usual practice is for a committee to be appointed by the House, which committee makes an investigation and prepares what is known as Articles of Impeachment. These Articles of Impeachment, if they are adopted by the House of Representatives, then form and constitute what might be termed in ordinary criminal practice an indictment; then the Senate tries the judge on these Articles of Impeachment. If the Articles of Impeachment are sustained, the judge stands impeached and can no longer hold office.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SHERIFFS—WHEN ENTITLED TO FEES AND MILEAGE

June 4, 1931.

Dear Sir:

Replying to yours of the 2nd instant, in which you ask to be advised whether or not the Sheriff is entitled to a three-way mileage fee in a case of ne exeat, when the writ is handed to him in the city where the writ is to be served, permit me to say the Sheriff is not entitled to, and the statute prohibits the Sheriff charging a constructive mileage. We note that you are under the impression that the writ of ne exeat is a criminal writ. In this you are mistaken, as the writ is issued by courts of equity for the purpose

of enforcing a decree or order of the chancellor. See *Bronk vs. State*, 43 Fla. 461, 31 So. 248.

We note that you state that the clerk's office inadvertently entered up default for failure to file appearance when one was entered and gave plaintiff final judgment and execution, which was levied on the goods locked in a store, and you wish to be advised whether or not the Sheriff is entitled to fee when the court quashes the levy and to be advised who should pay for the same if the Sheriff is entitled to the fee. In reply permit me to say it is my opinion that the plaintiff should pay the Sheriff's fee as the Sheriff is not supposed to be cognizant of the errors made by the clerk of the court.

Very truly yours,

CARY D. LANDIS,
Attorney General.

MOTOR VEHICLES—SUPERVISION BY RAILROAD COMMISSION

June 4, 1931.

Gentlemen:

Replying to your favor of June 3rd, in which you state that occasionally during the summer season you use your truck equipment to make trips to Jacksonville Beach and to other points adjacent to Jacksonville, and in which communication you raise the question as to whether or not you come under the jurisdiction of the Railroad Commission, I beg to advise that it is my opinion under the facts as stated above, you do come within the jurisdiction of the Railroad Commission, and if you wish to carry on such business it will be necessary for you to apply to the State Railroad Commission and obtain a Certificate of Public Convenience.

The fact that you pay city, State and County licenses, and taxes on your hauling equipment does not permit you to become a common carrier without submitting yourself thereby to the jurisdiction of the State Railroad Commission. I do not think the Railroad Commission has taken an arbitrary position in this matter, but they are simply administering the law as they find it. Whether or not the law is proper is purely a question for the Legislature and not the State Railroad Commission.

Answering the last question in your letter I would state that you are required to comply with the law when you become a common carrier, simply because that is the law and not because of any arbitrary ruling on the part of the Railroad Commission.

Very respectfully,

CARY D. LANDIS,
Attorney General.

MUNICIPALITIES—APPLICATION OF LAW IN RE AUTHORITY
TO BORROW MONEY ON ANTICIPATED COLLECTION
OF TAXES

June 5, 1931.

Dear Sir:

I beg to acknowledge receipt from you of the letter of Hon. J. H. Bayliss, Mayor of the City of Pensacola, dated June 2nd, 1931, seeking my opinion on the authority of cities in Florida to borrow money for the payment of current budget expenses based on anticipated collection of taxes for this year and uncollected during said year, particularly for the payment of salaries of employees.

This is a little out of my line of official duty, and any opinion expressed by me is neither official nor binding on any party or official of said city.

I know of no reason, however, why the proper city authorities may not borrow money for the payment of current budget expenses in anticipation of tax collection for the present fiscal year. This does not mean, however, that such money may be borrowed through the issuance of bonds.

The amendment to Section 6 of Article IX of the Constitution relating to bonds, which was adopted at the last general election, authorizes the issuance of bonds by municipalities in an election in which a majority of the freeholders, who are qualified electors residing in such municipality, shall participate and a majority vote for such issue; provided, that the provisions of said section shall not apply to refunding bonds issued exclusively for the purpose of refunding the bonds or interest thereon of such municipality.

The Supreme Court of Florida in the case of *Johnson et al. vs. Board of Public Instruction et al.*, 81 Fla. 503, 88 So. 308, in construing the provisions of Section 17 of Article XII of the Constitution and the purposes for which bonds may be issued by Special Tax School Districts under the provisions of said section, said that neither the Constitution nor the statute contemplates the issuing of bonds payable in future years for the purpose of employing teachers for the district and to defray the general expenses of running and operating the schools, and this holding of the court may and probably would be applied in construing the authority of municipalities to issue bonds and the purposes for which the same may be issued.

Section 5 of Article IX of the Constitution provides that the Legislature shall authorize the several incorporated cities and towns to assess and impose taxes for municipal purposes, and it is contemplated that the current operating expenses of such municipalities shall be paid from the taxes collected for such current fiscal year.

I am returning the enclosures sent with your letter.

Yours very truly,

CARY D. LANDIS,
Attorney General.

POLL TAXES—PAYMENT, ELIGIBILITY TO VOTE

June 6, 1931.

Dear Sir:

Replying to yours of the 4th instant, permit me to say that Section 16 of Chapter 13761, Acts of 1929, requires that poll taxes be paid on or before the 3rd Saturday preceding the day of the first Primary Election.

Section 302, Compiled General Laws, provides that poll taxes be paid on or before the second Saturday of the month immediately preceding the day of the General Election.

Replying to your second question, permit me to say that to be eligible to vote the elector must have resided in the county for six months, and in the State for one year, prior to the date of the election.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MUNICIPALITIES—GOVERNOR AUTHORIZED TO DIRECT
EXAMINATION OF FINANCIAL DEPARTMENT

June 6, 1931.

Dear Sir:

Section 3089, Compiled General Laws of 1927, the same being Section 1956 of the Revised General Statutes of 1920, provides that the Governor shall have power to authorize and direct the Comptroller by himself, or by some competent person or persons appointed by him, to examine into the affairs of the financial department of any municipality within the State, and it shall be his duty to direct the Comptroller to make such examination whenever petitioned to do so by at least 20 per cent of the tax paying electors of any municipality.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FRUITS AND VEGETABLES—IN RE LICENSE TAX FOR SELLING

June 11, 1931.

Dear Sir:

Replying to yours of the 8th instant in which you ask to be advised whether or not you will be required to pay a state and county and municipal license for engaging in the business of selling peaches in the State of Florida, permit me to say that the statute reads as follows:

"Any person, firm or corporation in the business of selling or trading fruit or vegetables from railroad cars where no permanent building or place of business is maintained shall pay a tax of \$3.00 in each county."

The license taxes imposed by cities and towns are governed by ordinances of such towns and we do not know exactly the amount imposed by them.

The Legislature is now in session and the license tax above quoted may be increased at this session.

While the section of the statute above quoted expressly applies to railroad cars, it is our opinion that it would likewise apply to motor trucks.

Yours very truly,

CARY D. LANDIS,
Attorney General.

GASOLINE—WHEN SUBJECT TO STORAGE TAX

June 20, 1931.

Dear Sir:

This refers to your favor of the 18th instant, and in reply I beg to advise that where gasoline is purchased in a state other than Florida or shipped or imported into Florida, either from some other foreign state or country and which gasoline shall thereafter for a period of twenty-four hours after it loses its interstate character as a shipment of interstate commerce be kept in storage in Florida to be used and consumed in the State of Florida, it is subject to what is known as the gasoline storage tax provided for by Chapter 13756, Laws of Florida, Acts of 1929.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PRISONERS—REVISION OF STATUTE IN RE COSTS AND FINES

July 2, 1931.

Dear Sir:

Replying to your favor of the 27th ultimo, in which you request my opinion on Section 6118 of the Revised General Statutes of 1920 and the apparent discrepancy between the provisions of that section and the opinion of Justice Rainey in *ex parte Pell*, 28 Fla. 67, and 9 So. 833, permit me to say that the opinion of Judge Rainey was written prior to the adoption of the Revised General Statutes of 1920.

Prior to the 1920 revision of the statutes, a prisoner could not be confined more than sixty days for failure to pay his fine or fine and cost, where it did not exceed \$300.00. When the statutes were revised in 1920, the amount was changed from \$300 to \$100. The 1920 revision was adopted by the Legislature as the Laws of Florida, and the amount of \$100 now stated in Section 6118 of the Revised General Statutes of 1920 is the correct amount, instead of the amount referred to in the opinion of Judge Rainey.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SUNDAY—UNLAWFUL TO OPERATE MOVING PICTURES OR
OTHER THEATRES

July 2, 1931.

Dear Sir:

Replying to yours of the 25th ultimo, in which you ask if it is against the law of the State of Florida to operate moving pictures or other theatres for pay on Sunday, permit me to say that Section 7649, Compiled General Laws, reads as follows:

"Whoever follows any pursuit, business or trade on Sunday, either by manual labor or with animal or mechanical power, except the same be worked of necessity, shall be punished by a fine not exceeding \$50. Provided, however, that nothing contained in the Laws of Florida shall be so construed as to prohibit the preparation of printing between the hours of midnight Saturday and six in the morning Sunday, of any newspaper intended to be circulated and sold on Sunday, or to prohibit the circulation and sale on Sunday of same, or to prohibit the circulation and sale on Sunday of any newspaper theretofore printed."

You will see from the above quoted section that it is against the law to operate a moving picture show on Sunday for pay.

A violation of this kind might be stopped by an injunction issued by the Circuit Court, or by a warrant issued from the Court of the County Judge.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY DETECTIVE—IN RE TERMINATION OF OFFICE

July 3, 1931.

My Dear Sir:

This refers to your favor of the first instant, in which you refer to Chapter 12704, Special Acts of 1927.

In your letter you state that the County Commissioners of Duval County employed a County Detective, who was appointed by the Governor, under the terms and in accordance with the above referred to Chapter of the Laws of Florida. By reference to Chapter 12704, it will be seen that the tenure of office of County Detective is indeterminate. The commission issued to the County Detective provides that he is commissioned "in and for Duval County, from the 25th day of July, A. D., 1929, pursuant to the provisions of Chapter 12704, Laws of Florida, Session of 1927."

In the case of the State of Florida, ex rel. Fred H. Davis vs. Fred Botts, Respondent, in the January term, A. D., 1931, the Court used this language:

"The Court further holds that the said office is a continuing office, and that the said act, by leaving the tenure of said office indeterminate, not fixing a constitutional term, violates the inhibitions

of Section 7 of Article XVI of the Constitution of Florida. That the said act is unconstitutional and void."

It is my opinion that the utterance of the Court, above quoted, is applicable to Chapter 12704. Regardless of the Constitutionality, Chapter 12704 states that the County Detective is an employee of the County Commissioners of Duval County, and, being an employee, I see no reason why, considering the entire chapter, the County Commissioners cannot, by proper resolution, terminate the services of the County Detective at their pleasure, and, in this method, it seems to me that this employment may be terminated and the County Detective taken from the payroll.

Very respectfully,

CARY D. LANDIS,
Attorney General.

COUNTY SUPERINTENDENTS OF PUBLIC INSTRUCTION IN RE
SALARIES

July 8, 1931.

Dear Sir:

Replying to yours of the 24th and 30th ultimo, permit me to say the bill passed at the recent session of the Legislature fixing the salaries of County Superintendents of Public Instruction in the several counties of the State provides that the salaries shall be the same as those paid during the month of January, 1931, and thereafter, except as otherwise provided by law. If there is a special act applying to your county fixing the salary of the County Superintendent of Public Instruction, the salary should be the amount fixed in said special act.

You request me to give you an opinion regarding the validity of certain chapters which you think are applicable to your county. In reply, permit me to say that any act of the Legislature is valid until it has been attacked in a court of competent jurisdiction and declared to be invalid.

We note that you also wish to be informed as to whether it is the duty of the County Commissioners or the duty of the School Board to pay the salary of the Superintendent of Public Instruction. Permit me to say the salary of the County Superintendent should be paid from the General School Fund of your county.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FISHER DEALER—WHEN LIABLE FOR WHOLESALE AND RETAIL
DEALER'S LICENSE

July 8, 1931.

Dear Sir:

This refers to your favor of June 30th in which you request my opinion as to whether or not when you deal in fresh water fish and in salt water fish, both as a wholesale and retail dealer, you are subject to two wholesale

licenses and two retail licenses, one for each department, and I beg to advise you that it is my opinion that if you deal as a wholesale and retail dealer in fresh water fish, that you are liable for the license tax as a wholesale and retail dealer in fresh water fish, and if you also deal in salt water fish as a wholesale and retail dealer, that you are liable for a wholesale and retail dealer's license for handling such salt water fish.

The Shell Fish Department is entirely separate and distinct from the Department of Fresh Water Fish, and a license is provided for in each kind of fish, and if you deal in both kinds of fish, you are liable for both licenses, regardless of what kind of water the fish are caught in.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

TRUSTEE—WHEN RELIEVED OF OBLIGATION TO QUALIFY

July 9, 1931.

Gentlemen:

Replying to your letter of the 2nd instant, I beg to advise that Section 6036 of the Compiled General Laws of Florida, 1927, relieves you from the obligation to qualify to do business in this State in order to act as trustee involving property in this State, provided you have no interest in the deed of trust other than the protection of the holders of bonds and other negotiable paper secured by such deed of trust.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CIVIL RIGHTS—RESTORATION IN CERTAIN CASES

July 9, 1931.

Dear Sir:

Replying to yours of the 27th ultimo, in which you state that you have been informed that I have determined the question of whether or not under the State law when a person is convicted in the Federal Court of Florida on a charge of conspiracy and has paid the nominal fine, thereby losing certain civil rights, whether or not the Pardon Board is in a position to restore the same to the offender, permit me to say this office has had no occasion to look into this question; however, we are informed on good authority that the proper method to pursue to have civil rights restored for a conviction where one is convicted in Federal Court is to apply to Honorable James A. Finch, pardon attorney, in the Department of Justice, Washington, D. C.

We assume that if the offense was against the Federal statute and civil rights were restored through the Department of Justice at Washington that

the civil rights of the offender would not be impaired under the Laws of Florida. We might state that there is a long line of decisions to the effect that where penal servitude is not imposed in the sentence by the Federal Court that the civil rights of the person convicted are not impaired. However, we suggest that you take this matter up with Mr. Finch, stating the facts to him, and he will no doubt inform you regarding what is necessary to be done in the premises.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX COLLECTING AGENCY—LICENSE TAX REQUIRED

July 9, 1931.

Dear Sir:

Replying to your favor of the 7th instant relative to whether or not a tax collection agency is required to pay a State and county license in each county in which it does business, permit me to say:

By reference to Section 1338, Compiled General Laws, the same being Chapter 12414, Acts of 1927, you will see that the law clearly and definitely requires the payment of a State and county license by a tax collection agency in each county in which it does business.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORPORATION TAX—SECRETARY OF STATE WITHIN RIGHTS
TO REFUSE TO REFUND PAYMENT

July 10, 1931.

Dear Sir:

This refers to your favor of July 9th. In your letter you enclose copy of letter from Hon. R. A. Gray, Secretary of State, addressed to you under date of July 7th. It appears that you undertook to pay certain corporation taxes under protest and that the Secretary of State refused to accept the payment of these taxes under your protest.

The Secretary of State, in my opinion, was clearly within his rights under the law and did what he should have done. I assume that you have accomplished your purpose in making such protest as you desired and that it is now a question of the execution of the law. It is my opinion that a State official cannot accept this money under protest and pay it into the State Treasury and, therefore, the Secretary of State was entirely within his rights and, on the other hand, I assume you have undertaken to avail yourself of whatever you had in mind by virtue of the protest.

Very respectfully,

CARY D. LANDIS,
Attorney General.

CORPORATION—INDIVIDUAL CANNOT DO BUSINESS AS
CORPORATE ENTITY

July 10, 1931.

Gentlemen:

This refers to your favor of July 8th, in which you make inquiry as to whether or not where one person has acquired all the stock of a corporation he can proceed to do business as a corporate entity. It is my opinion that this cannot be done.

I think you will find if you look at your charter that there must be at least three officers, and to be officers there will have to be of necessity three stockholders.

Very respectfully,

CARY D. LANDIS,
Attorney General.

WAR VETERANS—WHEN ENTITLED TO TAX EXEMPTION

July 10, 1931.

Dear Sir:

Replying to your favor of the 7th instant, in which you make inquiry regarding the veterans' tax exemption, and in which you state that you have been declared to be 75 per cent disabled by a physician and in which you state that with all of the evidence you have at hand, the County Attorney has ruled that you are not entitled to the exemption claim, permit me to say that if you will read the statute carefully which provides for veterans' exemptions you will find that there is no provision made for disabilities which have accrued since discharge from the army unless such disability is directly traceable to army service.

Of course, you understand that this office has no power to compel the county officials to recognize your claim, regardless of whether or not it is well founded.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY BONDS—ACCEPTABLE IN PAYMENT OF TAXES

July 11, 1931.

Dear Sir:

Replying to your favor of the 8th instant, and in compliance with your request, I beg to advise that it is my opinion that the act in question, to-wit: Senate Bill No. 852 (Chapter 15054, Acts of 1931), does authorize the ac-

ceptance of county bonds which have not yet matured. It seems to me that the act provides that the following shall be accepted:

- (a) Bonds (Without stating whether delinquent or otherwise).
- (b) Delinquent interest coupons.
- (c) Other due or past due obligations of such counties.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WAR VETERAN—WHEN ENTITLED TO LICENSE TAX
EXEMPTION

July 13, 1931.

Dear Sir:

Replying to your favor of the 11th instant in which you ask to be advised whether or not a disabled war veteran is entitled to a license free of charge under Section 1269, Compiled General Laws, to carry on through his son a business, permit me to say my predecessor in office, former Attorney General Davis, in an opinion rendered July 18th, 1929, held that a disabled war veteran is entitled to a license to engage in business free of charge only when such business is to be followed by the veteran as a means of earning his living and is limited to such business as will be carried on mainly through the personal efforts of such veteran.

We concur in the opinion expressed by Mr. Davis and in your views expressed in your letter. We are sending you under separate cover a copy of the Attorney General's report for the years 1929-30 and call your attention to pages 180, 181, 182 and 183 thereof.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MUNICIPALITIES—IN RE PROTECTION OF FUNDS IN STATE
BANK

July 13, 1931.

Dear Madam:

Replying to your favor of the 9th instant in which you ask to be advised as to the section of the laws of Florida requiring protection of municipal funds in a local state bank, permit me to say:

A municipality is a corporation chartered by the State. The charter provides that the council or commission may enact reasonable ordinances for the government of the municipality. The council or commission in their manner of functioning are not unlike the board of directors of a privately owned corporation, and it is their duty to take good and sufficient security for the deposit of municipal funds just as the directors of any other corporation would

require. If you will refer to Section 2935, Compiled General Laws of 1927, and read all the sections through to, and including, Section 3141 you will find about all of the law of a general nature applicable to the government of cities and towns.

Relative to your inquiry regarding House Bill No. 140-x, which became a law June 26, 1931, and which requires the trustees of High Springs Special Road and Bridge District to remit the balance to the credit of the district on deposit in the bank of High Springs, to the State Treasurer, permit me to say we are enclosing copy of the Act of the Legislature and you will see from the act itself that the trustees are required to transmit the balance to the State Treasurer and for what purpose.

The State Treasurer advises that up to this date he has not received the funds from the trustees as provided by House Bill No. 140-X.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SECURITIES ACT—QUALIFICATION UNDER

July 13, 1931.

Dear Sir:

This refers to your favor of July 2nd. If I understand your letter correctly, MacMasters and Fondersmith, a partnership, expect to go into the business of selling securities for a certain corporation now being formed, which you expect to handle through salesmen. If and when the securities are entitled to be authorized and placed on the market, it is my opinion, that your firm as a dealer and your salesmen will have to qualify under the State Securities Act, under Section 11 of such act. You will see by reference to the act that it is provided

"If the commission shall find that the applicant is of good repute, and has complied with the provisions of this section, including the payment of the fee hereinafter provided, he shall register such *applicant as a dealer* upon his filing a bond in the sum of \$5,000.00 running to the Governor of the State of Florida, etc."

As to who shall pay the fees for the bond and the salesmen is a matter in which the State has no interest, that being purely a local matter of business you can work out among yourselves.

Very respectfully,

CARY D. LANDIS,
Attorney General.

SECURITIES ACT—QUALIFICATION OF DEALERS AND SALESMEN NECESSARY

July 13, 1931.

Gentlemen:

This refers to your favor of June 30th, and in reply I beg to advise that even though you are dealing in Florida securities, that is, in Florida municipal, county and district bonds, it will nevertheless be necessary for you to qualify as a dealer and qualify your salesmen under Section 11 of the Florida Securities Act.

If you will read Section 11 you will find that it includes those cases where the dealer or salesmen sell securities exempted in Section 4, which covers your case.

Very respectfully,

CARY D. LANDIS,
Attorney General.

ACCOUNTANCY ACT—CONSTRUCTION IN RE CERTIFIED PUBLIC ACCOUNTANTS AND PUBLIC ACCOUNTANTS

July 15, 1931.

Dear Sir:

Replying to your favor of July 13th, which was handed to me by Senator King of your county, I beg to advise that I have studied Senate Bill No. 82, which became a law and is known and designated as Chapter 12290, General Laws of Florida, 1927, as well as the recent act, to-wit: Senate Bill No. 174-X, which has also become a law, Chapter 15637, Acts of 1931.

It is true that in most respects a certified public accountant and a public accountant have the same privileges and rights. In other words, they are authorized to perform the same service to the public, but there is a definite classification of qualified accountants. One falls within the class to which certificates are issued as certified public accountants and the other class to which certificates are issued as public accountants. It is my opinion that there is a clear and definite basic classification for these two classes of people who are authorized to do accounting for the public, and I am further of the opinion that cities, towns, bond houses, etc., may require that their audits be conducted by either one or both of these classes of accountants, and I am therefore, of the opinion that a city charter or ordinance or bond house requirement requiring that the audits of the particular city, town, etc., be made by a certified public accountant, rather than a public accountant who holds a certificate as such are valid, and such ordinances, charters, etc., in my opinion, are not unconstitutional. In other words, while a public accountant has the right to practice accounting just as well and in the

same manner as a certified public accountant, yet it seems clear that a city or bond house might choose one or the other under this law and without violating any section of our Constitution.

Very respectfully,

CARY D. LANDIS,
Attorney General.

INSURANCE COMPANY—IN RE LOST COUPONS

July 16, 1931.

Gentlemen:

This refers to your letter of July 11th, addressed to the Attorney General of Florida.

I note that you represent some insurance companies that carried insurance upon certain coupons sent by United States registered mail which were lost. You state that there were five of the coupons, each in the sum of \$27.50. The question you ask is whether or not the State Treasurer should not permit you to put up bond to protect them in the payment of claims for these lost coupons. Under the law of the State of Florida there is no duty resting upon the State Treasurer to honor or pay out any state moneys, except upon the return to him of the coupons or bonds, etc. There is no duty resting upon the State Treasurer and no law authorizing him to work out some other system of protection to the State than the surrender of the original instruments, or in the event of their loss such instruments should be duly and properly reinstated by judicial order.

Very respectfully,

CARY D. LANDIS,
Attorney General.

TEACHERS' UNIT LAW—FUNDS PROVIDED FOR NOT LIMITED TO PAYMENT OF TEACHERS' SALARIES

July 18, 1931.

Dear Sir:

Replying to your favor of the 15th instant, in which you ask to be informed as to the teacher unit bill, and in which you ask whether or not the thousand dollars per unit is intended to pay the cost of transportation of the pupils as well as the teacher's salary, permit me to say that Section 4 of the Act of the Legislature, 1931, reads as follows:

"Section 4. That the total number of instruction units of a county shall be computed by using the elementary instruction unit as a base, giving each Junior High School Instruction Unit a value of 1.22, each Senior High School Instruction Unit a value of 1.43, and counting

one Instruction Unit for each Fifteen Hundred (\$1,500.00) Dollars or fractional part of that sum spent for the transportation of pupils."

You will note from the Section quoted above that the funds provided for by the bill should not be limited to the payment of teachers' salaries.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DRAINAGE TAX—CERTIFICATE NO. 5288 VALID LIEN

July 20, 1931.

Dear Sir:

Replying to your letter of the 16th inst., in which you relate certain transactions affecting the title to Lot 5, Block 94, of Palm Beach Farms, in Broward County, Florida, and in which you state that a part of this property was deeded to Broward County on August 10, 1926, by the C. C. Lumber Company, and in which you state that the Tax Collector in 1927 sold the property for unpaid State drainage taxes for the year 1926, and executed Tax Sale Certificate No. 5288 to the trustees of the Internal Improvement Fund, and that subsequently, i. e., on the 8th day of April, 1931, the trustees executed a drainage tax deed covering tract 5 of block 4 of the land in question to Globe Mortgage Company, and that the Globe Mortgage Company claims to be the owners of such lands under and by virtue of the drainage tax deed executed by the trustees, and in which you asked for my opinion as to the validity of the drainage tax certificate, and as to the validity of the deed executed to the Globe Mortgage Company, permit me to say:

Under the statement of facts contained in your letter, it is my opinion that the drainage tax certificate issued by the collector for unpaid drainage taxes for the year 1926 was a valid lien against the property at the time of the conveyance to Broward County by the C. C. Lumber Company; that under the law the property did revert to the trustees of the Internal Improvement fund, and that the trustees had the authority to execute the drainage tax deed to the Globe Mortgage Company.

While we do not think the question has any bearing on the subject, you, of course, understand that the County Commissioners are in error on the proposition that the property was exempt from drainage tax under the provisions of Section 897, C. G. L. Only lands owned by the counties and used, or intended to be used, for public purposes, such as a Court House site, or public park, or where the property is used or intended to be used by the public generally, is exempt under that section.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SECURITIES ACT—QUALIFICATION IN CERTAIN CASES
NECESSARY

July 21, 1931.

Gentlemen:

This refers to your favor of July 18th, relative to requirement of Uniform Sales of Securities Act.

It is my opinion that the securities in which you deal are clearly what are deemed exempt securities under Section 4 of the act. This, however, does not permit a dealer or salesman to engage in business as such dealer or salesman or sell any securities, even including securities exempted in Section 4, except when involved in transactions exempt under Section 5, etc. It is, therefore, my opinion that the Brown-Crummer Company will have to qualify as a dealer and the salesmen employed will have to be registered.

Very respectfully,

CARY D. LANDIS,
Attorney General.TAXES—CERTAIN PROPERTY DEEDED TO COLLEGE NOT
EXEMPT

July 21, 1931.

Dear Sir:

Replying to your favor of the 17th instant in which you ask to be advised whether or not unimproved Florida real estate deeded by you to a college in Florida or in another State, will be subject under the laws of Florida to State and county taxes pending the time when the property is improved and actually used for educational purposes, permit me to say:

It is my opinion that the property deeded to an educational institution in this State and not used for educational purposes by such institution would be subject to taxation.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAXES—ASSESSMENT AND COLLECTION

July 21, 1931.

Gentlemen:

Under the laws of this State taxes are assessed as of January 1st each year, and become a lien on the property assessed from that date. Taxes are due and payable on November 1st of the same year, and become delinquent if not paid by April 1st of the following year.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY JUDGE—GUARDIAN REQUIRED TO MAKE REPORT

July 18, 1931.

Dear Sir:

Replying to your favor of the 16th instant, in which you state that you are guardian for your deceased brother's children, and that your county judge has advised you that it is necessary for you to make a record of each item of receipts and disbursements and include them in your reports, and in which you ask me to advise you whether or not the county judge is correct in the position he takes, permit me to say that it is my opinion that the county judge is correct and that, under the law, it is necessary for you to make the report as the county judge has advised.

Yours very truly,

CARY D. LANDIS,
Attorney General.

OCEAN SHORE IMPROVEMENT DISTRICT—BOND TRUSTEES
NOT AUTHORIZED TO GRANT FRANCHISE

July 22, 1931.

Dear Sir:

Replying to your favor of the 17th instant, in which you state the board of bond trustees of the Ocean Shore Improvement District of Flagler and Volusia counties, Florida, have been requested by certain private parties for a franchise to run a water main from the south line of Daytona Beach in said district along the right of way of the boulevard a distance of approximately four miles for private use, and in which you ask to be advised whether or not, under House Bill No. 1306, your board of bond trustees or the County Commissioners have the legal right to grant such a franchise, permit me to say:

The powers and duties of the bond trustees of the district are prescribed by the statute creating the district. The Ocean Shore Improvement District lying in Flagler and Volusia counties was created by Chapter 10013, Acts of 1923, which was amended by Chapter 10258, Acts of 1925. We fail to find in the original act or in the act as amended, either expressed or implied authority for the bond trustees to grant a franchise to private parties to run a water main along the right of way of any road contemplated by the acts above mentioned. We do not find a general law giving authority to either the trustees or to the Boards of County Commissioners to grant franchises on public highways to private use. The powers of both the County Commissioners and the trustees are only those prescribed by statute, and as there is no statutory authority granted to the trustees or to the County Commissioners, it is my opinion that neither the trustees nor the commissioners could grant a valid franchise to private interest to construct a water main along the right of way of a public road or boulevard.

We have read House Bill No. 1306 and its provisions appear to be confined solely to the duties of the trustees in regard to the handling of the funds of the Improvement district.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORPORATION ACT—CHAPTER 14677—SUGGESTED
AMENDMENT

July 23, 1931.

My Dear Colonel:

This acknowledges receipt of your favor of the 22nd instant, and I note that you feel that it would be better for this act to be amended, with reference to the allocation feature of the capital of foreign corporations.

In the execution of the act up to this time, the filing fee or tax on foreign corporations has been computed solely upon the amount of the capital stock allocated for use in the State of Florida. It is my opinion that this is the proper interpretation of the act, and that the Court would construe all of the sections of the act together, and you will note that Section 1 of the act provides with reference to the amount of the capital stock that: "If a foreign corporation, the amount of its capital stock allocated for use in the State of Florida" shall be a part of the information set forth in the sworn report to be filed with the Secretary of State.

With the construction of the act thus placed upon it, the foreign corporations seem to be entirely satisfied, and so far as we know all, or practically all of them are qualified without any objection on the theory of paying the filing fee, either according to the minimum amount or according to the amount of the capital stock allocated to use in the State of Florida.

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

COUNTY JUDGE—NOT AUTHORIZED TO CHARGE FOR RECORD-
ING FINAL REPORT OF GUARDIAN

July 23, 1931.

My Dear Sir:

This is in reply to your favor of the 20th instant, in which you ask my opinion as to whether or not it is the duty of the county judge to record the annual and final reports filed by a guardian and to charge for such recording.

It is my opinion that there is no law authorizing the county judge to record and charge for recording the annual or final reports of a guardian. I quote you Sections 5548 and 5549 of the Compiled General Laws of 1927:

"5548. (3683). *Contents of.*—Executors and administrators in their annual returns shall render a full and correct account of the receipts and expenditures of all estates of which they may have control. (Fed. 13, 1864, Per. 1.)"

"5549. (3664.) *Approval and Record of.*—If such accounts shall be approved in whole or in part such approval shall be so entered upon the record, and the said accounts be filed in the office of the judge. (Id.)."

You will see by this that the law requires that the approval of such accounts shall be entered upon the records, and it provides that the accounts *be filed*, but there is no law authorizing the recording of these accounts, nor is there any law permitting any such charge to be made.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BOARD COUNTY COMMISSIONERS—DUTIES IN RE CERTAIN
BONDS UNDER CHAPTER 15054, ACTS 1929

July 24, 1931.

Dear Sir:

Replying to your favor of the 15th instant, in which you have requested an opinion from this office regarding the powers and duties of the Board of County Commissioners under the provisions of Senate Bill 852, which is Chapter 15054 of the Acts of 1929, permit me to say in reply to your first question:

It is my opinion that if the Board of County Commissioners adopt a resolution to accept county bonds for State and county taxes, district bonds for the taxes levied in the district issuing the bonds, that it would be the duty of the board to accept such bonds for the payment of delinquent taxes levied for the year 1929 and for all years prior thereto, and that the board would not be authorized to limit by resolution the acceptance of such obligations to the years 1928 and 1929 only.

Replying to your second question, in which you state that in your county several districts, special road districts, special school districts, the port district, and many drainage districts, have issued bonds which are in default, and ask to be advised whether or not the board would be authorized by resolution as contemplated in Section 1 of the act under consideration to accept at par, for taxes levied for 1929 and prior years, defaulted bonds, permit me to say that it is my opinion that the bonds referred to in the act should be accepted at par, if accepted at all, whether the bonds have defaulted or not.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX SALE CERTIFICATES—REFUND CLAIMED

July 24, 1931.

Dear Madam:

I have further investigated the matter of the tax sale certificates which you say you own and which were redeemed some years ago.

You state that Mr. Dickenson says that these certificates were not checked over to him and the money was not accounted for to him and, therefore, he cannot pay the same. I assume that Mr. Dickenson has been Clerk of the Circuit Court for a good many years. Prior to the year 1921 there seems to have been no law requiring the Clerk of the Circuit Court to turn over to his successor the money he had in his hands which had been received for redemptions from sales for taxes or special assessments on real estate. Such a law was passed in 1921 and is now covered by Sections 990 and 991 of the Compiled General Laws of 1927. If this money was not checked over to Mr. Dickenson, he, of course, would have no money with which to pay you. Thus it seems to me that you would have to proceed against Mr. Givens or whoever the clerk was that received the money, or against his estate, or his bondsman, and if no relief could be obtained in this way, that you would then be forced to get relief through a relief bill in the Legislature.

I have pursued the matter as fully as I can, and as you know my duties are to advise the State Departments and, therefore, I cannot handle your matter further in a private capacity. I feel that you are entitled to this money from what you say, and I would suggest that you obtain the services of some competent lawyer to handle the matter to a conclusion for you. I am sorry that I cannot afford you more relief without any further trouble on your part.

Very respectfully,

CARY D. LANDIS,
Attorney General.

DELINQUENT TAX SALE—IN RE NOTICE

July 24, 1931.

Dear Sir:

Replying to your letter of the 20th instant, I beg to advise that four weekly insertions of the notice of delinquent tax sale under Section 969 of the Compiled General Laws of Florida, is a sufficient compliance with the requirements of said act, provided the first publication is not less than 28 days prior to the sale day.

In other words, the first publication must begin not less than 28 days prior to the date on which the sale begins, and a notice must appear at regular intervals each week thereafter until four publications are had.

This is all the law requires.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—IF NOT LEGALLY DISSOLVED LIABLE FOR
CAPITAL TAX

July 25, 1931.

Gentlemen:

This is in reply to your favor of July 21, with reference to corporations that have liquidated and have no assets, but have not been legally dissolved.

It is my opinion that any corporation that has not been legally dissolved on or before July 1st, 1931, will of necessity be liable for the capital stock tax. A corporation under the conditions which you mention, in my opinion, would be liable for the minimum tax. The corporation could then be dissolved and that would finally wind up all liability and all affairs of the corporation.

Very respectfully,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—IN RE REPORTS AND FILING FEE

July 25, 1931.

Dear Sir:

Replying to your favor of July 22nd, I beg to advise that Senate Bill No. 734 (Chapter 14677), became a law May 28th, 1931. Section 1 of the act provides that the reports required shall be filed with the Secretary of State on July 1st of each year and at the same time the filing fee is due and payable.

Very respectfully,

CARY D. LANDIS,
Attorney General.CO-OPERATIVE MARKETING CORPORATIONS—FLORIDA SE-
CURITIES COMMISSION ACT DOES NOT AFFECT

July 25, 1931.

Dear Sir:

This refers to your favor of the 22nd instant.

I cannot believe that Hon Ernest Amos meant to advise you that the Florida Securities Commission Act repealed the law authorizing the organization of co-operative marketing corporations. The Florida Securities Commission Act does not affect the law pertaining to the organization of co-operative marketing corporations, except that if the co-operative marketing corporation wishes to sell stock, then it must qualify as required under the Florida Securities Commission Act with which you are familiar and which is known as House Bill No. 436, Chapter 14899, Acts 1931.

Very respectfully,

CARY D. LANDIS,
Attorney General.

STATE LAND—CUTTING AND REMOVING TIMBER, ETC.,
PROHIBITED BY LAW

July 25, 1931.

Dear Sir:

Replying to your letter of the 21st instant, I beg to advise that cutting or removing timber or working for turpentine purposes timber on land against which unredeemed and outstanding tax sale certificates are held, is prohibited by law, for which, in my opinion, injunction would lie.

In cases where such tax certificates are owned and held by the State, the State would be a proper party to such suit, and under the provisions of Section 4739, Compiled General Laws, it is made the duty of the State Attorney of the Circuit to appear and prosecute such suit for the State.

Yours very truly,

CARY D. LANDIS,
Attorney General.LIQUOR—VIOLATION OF LAW TO TRANSPORT INTO STATE FOR
BEVERAGE PURPOSES

July 27, 1931.

Dear Sir:

This will acknowledge receipt of yours of the 24th instant, in which you state that your client, Mr. J. Harry Parker, who is moving from Youngstown, to Lakeland, Florida, has a small amount of wine and whiskey that he owned before the country voted dry, and has filed an application with the Federal Prohibition Director for a permit to move said liquor from Ohio to Florida, which permit will depend upon a letter from the Attorney General of this State certifying to the legality of such removal.

In reply permit me to say that it would be a violation of the law to transport liquor from the State of Ohio into this State for beverage purposes.

Yours very truly,

CARY D. LANDIS,
Attorney General.SHERIFF—WHEN ENTITLED TO FEE FOR EXECUTING SEARCH
WARRANT

July 28, 1931.

Dear Sir:

Replying to your favor of the 24th instant, in which you ask to be advised whether or not the sheriff is entitled to a fee for executing a search warrant for stolen goods, where he fails to find any stolen goods, permit me

to say it is our opinion that he is entitled to a fee in such case, but is not entitled to a fee in liquor cases, unless the search should reveal the fact that the person named in the warrant is guilty of the offense charged.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FARM AND GROVE PRODUCTS—PRODUCERS ONLY EXEMPT
FROM LICENSE TAX

July 28, 1931.

Dear Sir:

Replying to your favor of the 23rd instant, in which you state that vendors of fruits and vegetables from other states have been selling farm and grove products in Tampa without paying a license, and that you and the people you represent feel that they should be required to pay a license, permit me to say:

The Legislature of 1929 enacted Chapters 13874 and 13875, which provide that all persons and corporations offering for sale farm or grove products grown in any State other than Florida, and products manufactured therefrom, shall be exempt from all forms of license tax, State, county and municipal, when the same is being offered for sale or sold by the person or corporation producing the said products, and when the State where the farm or grove products offered for sale are grown, gives and affords to Florida farm and grove produce sellers or peddlers this same exemption as to license tax.

The State of Georgia has given to Florida producers the same exemption or exemptions as those provided in the Laws of Florida, which are reciprocal.

You will note that the exemption provided for in the statute extends only to those selling farm or grove products, when such products are offered for sale by the person or corporation producing the said products. We do not construe the statute to mean that a peddler from another State could buy from producers and sell farm and grove products in Florida without paying a license.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WILLS—WHEN RECOGNIZED IN STATE

July 30, 1931.

Dear Sir:

Replying to your favor of the 27th instant, in which you ask to be advised whether or not an olographic will is recognized by the Probate Courts of the State of Florida for the distribution of real estate, permit me to say Section 5460 of the Compiled General Laws of Florida, under the title *Wills of Real Estate*, reads as follows:

"Every last will and testament disposing of real estate shall be signed by the testator or by some person in his presence and by his expressed direction, and shall be attested and subscribed in the presence of the said testator by two or more witnesses, or else it shall be utterly void and of no effect."

Section 5462, Compiled General Laws, under the title *Wills of Personal Property*, reads as follows:

"All wills of personal property shall be in writing and signed by the testator or some other person in his presence and by his expressed direction."

See *Brown vs. Avery*, 63 Fla. 355, 58 So. 34.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DELINQUENT TAXES, TAX CERTIFICATES AND TAX DEEDS— APPLICATION OF LAW

July 30, 1931.

Gentlemen:

Replying to your favor of the 27th instant in which you request an opinion on five specific questions relating to delinquent taxes, tax certificates, and tax deeds as covered under the provisions of Senate Bill 12XX, Chapter 15791, Acts 1931, permit me to say we will endeavor to give you our opinion regarding the practical and legal application of this act to the subject covered by its provisions.

Question (1). "Would a purchaser at a 1931 tax sale for 1930 taxes be compelled to submit to the partial payment plan as laid down in said bill?"

Answer. No. Because Section 5 of the act provides, that "whenever any tax lien or certificate is privately owned, then any right of installment redemption thereof at any time shall be conditioned upon and subject to the consent of the holder thereof."

Question (2). "Can a private holder of a tax certificate two or more years old now bring foreclosure proceedings and not be subjected to the partial payment under the act, said tax certificate having been purchased before Senate Bill 12XX became a law?"

Answer. The answer to question Number 1 likewise answers question Number 2, and we might add in further answer that Section 7 of the act under consideration provides that "This act shall be deemed to be cumulative and nothing herein contained shall be construed as repealing Chapter 14572, Acts of 1929, Laws of Florida."

Question (3). "Would a private purchaser at a 1931 tax sale on September 7, 1931, lose the interest on his investment, should the owner of the property desire to exercise his option of redemption prior to December 1, 1931?"

Question (3). A purchaser at a tax sale held on September 7, 1931, for 1930 taxes under the provisions of Section 2 of the act would be entitled to the amount of the face of the certificate and interest at the rate of 8% per annum, provided, at the time the certificate for 1930 taxes was issued, there were outstanding tax liens or tax certificates for one or more previous years. Section 2 of the act provides that "This act shall not apply to any taxes for the year 1930, unless on the property covered by such tax or certificate, there are outstanding tax liens or tax certificates for one or more previous years." We construe this proviso to mean that if there were no outstanding tax liens or certificates for one or more years prior to the issuance of the tax certificates for 1930 taxes, that the rate of interest would be governed by Chapter 14572, Acts of 1929.

Question (4). a. The former law provides that all subsequent taxes must be paid before the holder of a tax certificate can foreclose. Could a property owned defeat a holder of a 1929 certificate by exercising his option to redeem under the five-year installment payment plan by paying an installment on the 1930 taxes? b. How could the holder of the 1929 certificates protect his rights therein?

Answer. Section 3 of the act provides that "in lieu of redemption in full any such tax lien or certificates may be paid and redeemed over a period of four or less years from the time installment redemption begins, provided there be paid an amount to the officer having charge of redemption thereof."

(1) "A sum equal to the accrued interest thereon as provided in Section 2 hereof, together with the cost and fees, if any"; and

(2) "Twenty (20%) per centum of the face of such lien or certificate applicable to the particular property being redeemed therefrom," and

(3) "That thereafter there do be paid to such officer in installments the aggregate of which installments shall be annually equal to twenty (20%) per centum of the face of such certificate and accrued interest on such balance;" and

(4) "That the current like taxes during such period of redemption do be paid and do not be permitted to become delinquent."

We construe Section 3 of the act to mean that if a person held a certificate for 1929 taxes, and the property owner desired to make a partial payment in 1931 on a certificate issued for 1930 taxes, he would be required to pay the accrued interest and twenty per cent of the face of all liens or certificates issued prior to the certificates issued in 1931 for 1930 taxes, and accrued interest on and twenty per cent of the face on the 1931 lien or certificate issued for 1930 taxes also. If we are correct in this construction, we think the holder of the 1929 certificate is adequately protected.

Question (5). "Should the property holder become delinquent after exercising his option under the five-year plan, could the clerk immediately sell the certificates on the property, or would said certificates have to be advertised and offered at a regular tax sale."

Answer. Section 4 of the act provides that "upon any default, as provided in Section 5 hereof, all sums paid shall be credited to the face of any such certificate or lien, whereupon the same shall be disposed of as provided by law."

We construe Section 4 of the act to mean that in case of default the certificate shall be disposed of according to the provisions of Chapter 14572, Acts of 1929, just as if no partial payment had ever been made.

We are enclosing copy of Senate Bill 12-XX.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DELINQUENT TAXES—IN RE ACCEPTANCE OF BONDS IN
PAYMENT

July 31, 1931.

Dear Sir:

This refers to your favor of July 29th relative to Senate Bill No. 852, Chapter 15054, Acts 1931.

Answering your first question, it is my opinion that a taxpayer's land lying within two or more Special Road and Bridge Districts, and an assessment and levy is made in each of said districts against said lands, that bonds of an issue of one district cannot be accepted in payment of an item of taxes in another district.

Answering your second question, it is my opinion that it is necessary for the trustees of a Special Tax School District to adopt proper resolution as required by law, and no other bonds, except bonds issued by such Special Tax School District can be accepted in payment of this item.

Answering your third question, I beg to advise that where there are two or more bond issues outstanding in one Special Road and Bridge District, it is my opinion that bonds of any issue and of any maturity may be accepted.

Very respectfully,

CARY D. LANDIS,
Attorney General.

STATE ROAD DEPARTMENT—MAY SUE AND BE SUED

August 1, 1931.

Dear Sir:

The Legislature of Florida by Section 4 of Chapter 9312, Acts of 1923, provided "suits at law and in equity may be maintained by and against the State Road Department on any claim arising under contract for work done. Provided, no suits sounding in tort may be maintained against the department."

The Supreme Court in the case of *State ex rel Davis, Attorney General, vs. Love, Circuit Judge, et al.*, held the quoted provisions of the act unconstitutional, because of defect in the title thereto. Other than this case we have no holding of the Court on the question of the right to maintain suits or actions against the Road Department.

In the case mentioned, however, the Court held the Road Department to be a component part of the State Government, and that a suit against such department is in effect a suit against the State. This being the law, no suit could be maintained in the absence of a general law authorizing same.

The recent Legislature re-enacted the provision for suits against the Road Department on contracts. See Chapter 15022, Acts 1931.

The Road Department cannot be sued in tort.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELKS CLUB—WHEN EXEMPT FROM TAXATION

August 3, 1931.

Dear Sir:

Replying to your favor of the 31st ultimo, in which you state that all of the net income from rentals in your local Elks Club building is used for charitable and benevolent purposes, and your lodge rooms used every Sunday by one of your churches, and in which you ask for an opinion from this office as to whether or not your building is subject to taxation under the laws of Florida, permit me to say:

Paragraph 3 of Section 697, Revised General Statutes of Florida, provides that buildings owned and used by benevolent associations, the rents, issues and profits of which are used solely for charitable purposes, are exempt from taxation.

The question of whether or not your club building comes within the meaning and intent of the exception provided in paragraph 3 of Section 697 is a question of fact, the primary decision of which rests with the tax assessing authority, who is required to determine whether or not the association is charitable or benevolent, and whether or not the rents, issues and profits of the rented portion of the building are being used for charitable or benevolent purposes, which facts must form the basis of the exemption contemplated and authorized by law.

Under the statement of facts submitted in your letter, it is my opinion that your building comes within the exemption provided in the statute above referred to.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MOTOR VEHICLES—APPLICATION OF LAW IN RE EXEMPTION
FROM MILEAGE TAX CONTRACT CARRIERS

August 3, 1931.

Gentlemen:

This refers to your favor of July 22nd, and in reply to your inquiry and request I beg to state that as I understand it, your claim for exemption from mileage tax is on the ground that you are hauling exclusively for the Great Atlantic & Pacific Tea Company, and therefore, you come within the decision of the Supreme Court of the United States in the *Smith vs. Cahoon* case. In other words, you are operating as a contract operator under a certificate of public convenience and necessity issued to you by the Florida Railroad Commission. I assume you might avail yourself of the decision in the *Cahoon* case and refuse to pay the mileage tax for the privilege of hauling on the roads, but if you do so, I assume there is no question but that the Railroad Commission will have to revoke your certificate. Should this be done, it occurs to me that you might find yourself in a bad way, as Chapter 14764, Acts of 1931, Laws of Florida, specifically places auto transportation companies operating motor vehicles for transportation of persons or property as a private contract carrier for compensation under the jurisdiction of the Railroad Commission, and in addition provides that the commission in granting any such certificate shall require proof of public convenience and necessity therefor, and must also take into consideration the effect that the granting of such a certificate may have upon transportation facilities within the territory sought to be served, also the effect upon transportation as a whole within the territory.

Under the provisions of the act, it occurs to me that it might be rather difficult for a contract operator to secure a certificate from the commission, as I understand the field is fairly well, if not completely covered. I am advised that the Railroad Commission, acting under the advice of their special counsel, is willing for the contract carriers who have previously been granted a certificate of convenience and necessity to continue their operation under the act if such carrier conforms to the rule and regulations of the commission and pays the mileage tax and complies with the other requirements without requiring them to make a new application under Chapter 14764 of the Acts of 1931.

I have endeavored to go into this matter rather fully in order that you may have all of the angles of the situation before you in making your decision as to continuance of compliance under the old law, or permitting your certificate to be revoked and endeavoring to obtain a new certificate under the new law.

Very respectfully,

CARY D. LANDIS,
Attorney General.

TEAR GAS FOUNTAIN PEN—UNLAWFUL TO CARRY

August 4, 1931.

Dear Sir:

Replying to your favor of the first instant with which you enclose a pamphlet describing a tear gas fountain pen, and in which you ask to be advised as to whether the carrying of one of these pens on one's person would constitute a violation of any Florida statute, or if the same could be considered a concealed weapon or a weapon at all, permit me to say:

We have given this subject considerable consideration since receiving your inquiry, and have arrived at the conclusion based upon the law, that the carrying of the article described would be a violation of Section 7197, Compiled General Laws, which prohibits the carrying of arms of any kind or any manner of weapon secretly about the person.

The penalty provided in the statute is imprisonment from three to six months, or a fine of not less than \$100 and more than \$500.

The Law Dictionary describes a weapon as being an instrument of offensive or defensive combat. It also describes arms as anything that a man wears for his defense. The statute above referred to prohibits the carrying of arms of any kind or weapon.

Regarding your question as to whether the County Commissioners would have authority to authorize the carrying of a tear gas pen, it is my opinion that they would have no such authority. The statute authorizes the County Commissioners to grant a permit for the carrying of a pistol, but a weapon known as a tear gas pen is not included in the law.

Even if it were not unlawful for a person to carry a tear gas pen, we think it would be a dangerous thing to permit people generally, including children, to be armed with such weapons.

Yours very truly

CARY D. LANDIS,
Attorney General.

FLORIDA SECURITIES COMMISSION—CONSTRUCTION OF LAW

August 5, 1931.

Gentlemen:

This refers to your favor of June 23rd and pertains to the new Florida Securities Commission Act which became effective in Florida July 1st, 1931.

Section 1, sub-division (4) provides:

"The word 'dealer' shall not include a person having no place of business in this State who sells or offers to sell securities exclusively to brokers or dealers actually engaged in buying and selling securities as a business."

Section 5, sub-division (e) exempts from the provisions of the act the following transactions:

"The sale, transfer or delivery of any security to any bank, savings institution, trust company, insurance company, or to any corporation or to any broker or dealer; provided, that such broker or dealer is actually engaged in buying and selling securities as a business."

I understand that some of your clients, having no place of business in Florida, offer for sale from time to time, bonds, stocks and other securities to banks, savings institutions, trust companies, insurance companies, corporations and brokers or dealers, such broker or dealer being actually engaged in buying and selling securities as a business. The sale itself is consummated in New York and not in Florida. I further understand that those clients never sell or offer to sell these securities to the general public. The problem arises, as I understand it, that the local dealers in the various states are anxious that your clients should advertise in the local public press the securities which are sold to such dealers, and that your clients are willing to assist such local dealers by advertising such securities sold to them, provided they are not required to register as a dealer or broker in the State. (We are referring to that class of securities that are exempted under the law, or are duly qualified as required by law). If in running these advertisements, there shall be inserted in the end thereof the following, to-wit: "The above offering is confined to banks, savings institutions, trust companies, insurance companies, corporations and brokers and dealers actually engaged in buying and selling securities as a business," then I see no objection to your clients assisting local dealers by advertising the securities and they will not be required to register as a dealer or broker in this State. All of this, of course, is based on the fact that the securities shall be sold to the public by those who have duly registered as brokers or dealers, and have duly complied with our Florida Securities Commission Law.

Very respectfully,

CARY D. LANDIS,
Attorney General.

STATUTE OF LIMITATIONS—IN RE SUIT AGAINST PHYSICIAN
FOR NEGLIGENCE

August 6, 1931.

Dear Sir:

Replying to your favor of the 27th ultimo, in which you ask to be advised regarding the statute of limitations affecting the time within which an action should be brought against a physician in this State for damage resulting from negligence in diagnosis of treatment of his patient, permit me to say:

If the action is brought on the theory that there existed an implied contract between the physician and the patient, and the patient was injured because of the physician's negligence, or death ensued because of such negligence, the action should be brought within three years. See *Palmer vs. Jackson*, 62 Fla. 249, 57 So. 240.

Also sub-section 5 of Section 4663, Compiled General Laws of 1927.

If the action is brought upon the theory that no implied contract or written contract existed between the physician and the patient, and the action is based on death resulting from negligence, the action should be brought within two years. See Section 7047, 7048, 7049, and 7050, Compiled General Laws of 1927.

Yours very truly,

CARY D. LANDIS,
Attorney General.

HOSPITALS—STATUTE BROAD ENOUGH TO INCLUDE AS "BENEVOLENT OR CHARITABLE ORGANIZATION"

August 8, 1931.

My Dear Sir:

This refers to your favor of August 5th.

It is my opinion that Section 6495 of the Compiled General Laws of 1927 is broad enough, under the term "benevolent or charitable organization" to include hospitals. I think a number of the hospitals of the State are operating under this law, and I do not believe there is any question about it, as long as there is no private profit made with such organization.

It is my opinion that it does not make any difference that the hospital makes a charge for services whenever a patient can pay, as long as whatever the patient does pay goes into the operation of the hospital for caring for those who cannot pay, as well as for those who can pay.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX SALE CERTIFICATES—METHOD OF FORECLOSING

August 6, 1931.

Dear Sir:

Replying to your favor of the 1st instant in which you ask whether or not the holder of a tax certificate for the year 1929 can foreclose the interest of the tax certificate for the years of 1927 and 1928, or must the foreclosing tax certificate holder purchase all of the outstanding tax certificates, permit me to say:

Section 14 of Chapter 14572, Laws of 1929, provides that all omitted and subsequent taxes and interest must be paid on the tax certificate to be

foreclosed, and the holder must redeem all subsequent tax certificates affecting the same land.

We cannot see how it would be any advantage to a tax certificate holder to foreclose the interest represented by one certificate, while there are other outstanding liens in the form of tax certificates against the property.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY JUDGE—IN RE COST BILLS

August 6, 1931.

Dear Sir:

Replying to your favor of the 5th instant, permit me to say if you will read the case of *State ex rel. Murphy vs. Harlee*, 131 So. 866, which opinion was filed in the Supreme Court of Florida December 20, 1930, you will see that the Supreme Court said that Chapter 11893, Acts of 1927, fixing fees of Clerks of the Circuit Courts, did not govern the fees to be paid to justices of the peace, and that the justices' fees are controlled by Section 3084, Revised General Statutes of 1920. Therefore, the fees of the county judge, being the same as the fees of the justice of the peace, would be likewise controlled by Section 3084, Revised General Statutes of 1920.

Chapter 11893, Acts of 1927, had the effect of changing the fees of the Clerks of the Circuit Court and other officers mentioned therein. But inasmuch as the fees of the justice of the peace and county judge were not mentioned in said Chapter, the Supreme Court held that the fees of the judge and justice were governed by Section 3084, Revised General Statutes of 1920.

We quote below from the opinion of the Supreme Court in the case above cited, as follows:

"When one provision of the statute by general words of reference adopts provisions that appear only in another Section of the same statute, future amendments of the adopted provisions are not to be regarded as included in the adoption, unless an intent to include such future amendments in adopting the provision clearly appears."

We note that you state that the county judge of your county is charging according to the provisions of Chapter 11893, Acts of 1927. If so, he has been charging under the wrong statute. And we hope that he and the State Auditor will have no difficulty in adjusting the differences, if the State Auditor should check his cost bills.

Yours very truly,

CARY D. LANDIS,
Attorney General.

NAVAL STORES—CONSTRUCTION OF LAW IN RE INSPECTION
AND CLASSIFICATION

August 6, 1931.

My Dear Sir:

This is in response to your request for my opinion as to the construction to be placed upon the inspection and classification of naval stores' law, and especially with reference to the Inspectors of Naval Stores at Jacksonville.

The law provides as to how these men are appointed. It is then further provided that:

"The inspectors of naval stores shall have the power to make inspections of naval stores at the respective ports for which they are appointed, etc."

Section 7042 of the Compiled General Laws of Florida, 1927, among other things, provides that these inspectors "are to be paid by the owner or party for whom the inspection is made." Section 7032 of the Compiled General Laws of Florida, among other things, provides that the Governor "shall appoint a sufficient number of competent inspectors for the business at such port."

Endeavoring to answer your particular inquiry, it is my opinion, that each inspector when properly appointed is then authorized and has the power to act as such inspector for any owner or party for whom the inspection is made, and such owner or party for whom the inspection is made pays the fees to the inspector. I do not believe that the law contemplates that the total number of inspectors shall act as a unit or that the combined fees of all inspectors at any given point shall be divided equally among the inspectors, but I am clearly of the opinion that it was the intention of the Legislature that when an inspector is duly appointed that he then may proceed to exercise his powers under the law for anyone who sees fit to avail himself of this inspector's service, and whatever fees he collects under the law for such service belong to him. In other words, and speaking generally, any inspector is clothed with authority and qualification under the law and is entitled to the statutory fees for whatever service he renders to anyone, either by his solicitation or by the request of the party who wants the inspection made.

Very respectfully yours,

CARY D. LANDIS,

Attorney General.

MUNICIPAL AND STOCK EXCHANGE SECURITIES—DEALER RE-
QUIRED TO REGISTER AND FILE BOND

August 7, 1931.

Gentlemen:

This refers to your favor of August 4th.

I take it that your business is limited to the sale of municipal and stock exchange securities, but even though this is so and the securities handled by you are exempt under Section 4 of the Florida Securities Commission Act, yet

nevertheless, if you will turn to Section 11 of the Act on page 19, you will find that you will be required, even though dealing only in securities exempt in Section 4, to register as a dealer, and it will be necessary for you to file a bond in the sum of \$5,000.00, as is required by said Section 11 of the Act.

Very respectfully,

CARY D. LANDIS,
Attorney General.

BANKS, INSOLVENT—CONSTRUCTION OF LAW IN RE TIME FOR
FILING CLAIM WITH LIQUIDATOR

August 7, 1931.

Dear Sir:

This refers to your favor of July 31st, and is in reply to your inquiry as to the time for filing claim with Liquidator against an insolvent bank and as to the payment of dividends, etc., by the State.

Section 1 of Chapter 7935, Acts of 1919, now Section 8104 of the Compiled General Laws of Florida, 1927, as amended by Section 18 of Chapter 13576, Acts of 1929, requires that all claims of every kind and nature against a State bank or trust company that has been placed in the hands of a Liquidator, must be properly sworn to and filed with the Liquidator within one year from the date of the qualification of such Liquidator, and provides that no claims not so filed within twelve months from the date of the qualification of the Liquidator shall be included by the Liquidator or Comptroller in the distribution of the assets.

In construing this Section of the statute, our Supreme Court in the case of *Myers vs. Federal Reserve Bank of Atlanta*, 134 So. 600, said that the claimant has the option of filing his claim promptly, or of waiting until the last minute of the last hour for so doing, and that the principal consequence of his delaying to file his claim is that in event dividends are paid before the filing of such claim he would not be entitled to participate in such dividends as are declared while his claim remains unfiled through his voluntary delay.

In elaborating on the reason for its holding in this respect, the Court said:

"It is the duty of claimants against defunct banks to promptly file their claims, both common and preferential. While the statute permits a full year to do so without completely barring a claim, it does not follow that the bank Liquidator must wait until that year has completely expired before paying available dividends to those claimants who have promptly filed their claims and who have their claims on file when the Receiver or Liquidator is authorized by the Comptroller to pay a dividend out of the bank's assets.

The policy of our banking laws as favoring a prompt and expeditious handling of the affairs of a defunct institution has already been referred to by this Court in the case of *Amos vs Conklin*, 99 Fla. 206, 126 So. 283, 289, where the Court said:

'Delay in final settlement of affairs of an insolvent bank or liquidating bank is fatal to the interests of both creditors and stockholders. A speedy adjustment of delinquent banks is necessary to the efficiency and utility of the law.'"

It follows, therefore, that claimants who voluntarily delay the filing of their claims with the Liquidator against insolvent banks, are not entitled to participate in dividends declared before such claims are filed.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—IN RE CAPITAL STOCK TAX

August 8, 1931.

Gentlemen:

I beg to hand you herewith copy of the Capital Stock Tax Law.

It seems to me that under this law you probably could allow your corporations where they have closed out all of their assets to remain dormant, and then if at any time you wanted to revive them you could do so by paying all of the back taxes that had accumulated. Or, on the other hand, you could pay the minimum tax, or if your corporations have charters where the capital stock is of no par value, then you could pay the small amount of tax provided by law in such cases.

I think if you will study the provisions of the Act herewith enclosed that you will be able to determine for yourself just what course is advisable to pursue.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SHERIFFS—MILEAGE FEES WHEN TRANSPORTING TWELVE PRISONERS

August 8, 1931.

Dear Sir:

Replying to your favor of the 7th instant, in which you state that the Sheriff of your county recently arrested and transported twelve prisoners a distance of fifty-two miles, and that the Sheriff hired two cars and a bus to bring the prisoners in; and in which you ask whether or not the Sheriff would be justified in charging separate mileage for each of the prisoners, permit me to say that it is my opinion that he would not be justified in charging mileage for each prisoner separately.

It is my opinion that he would be entitled to reimbursement for car and bus hire.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STOCKHOLDERS—LIABLE FOR CONTRACTS OF STATE BANK
AND TRUST CO.

August 11, 1931.

Dear Sir:

Replying to your favor of the 8th instant, permit me to advise that Section 6059 of the Compiled General Laws of Florida, 1927, makes stockholders of every State bank and trust company individually responsible for all contracts, debts and engagements of such company to the extent of the full amount of stock held in such company at the par value thereof in addition to the amount invested in such shares. This is an individual liability of stockholders for the contracts, debts and obligations of the bank or trust company and such stockholders are not entitled to a set-off against such liability on account of deposits in such bank or trust company. In other words, the liability of the stockholder is to the creditors of the bank or trust company, while the claim of such stockholder on account of deposits is against the bank or trust company, therefore, the debts or demands, to-wit: the stockholder's liability on the one hand and the stockholder's claim for deposits on the other do not mutually exist between the stockholder and liquidator of the bank and are not subject to set-off.

In the next place and as a further reason why there cannot be a set-off of the deposits of a stockholder against his statutory liability, the statute making stockholders liable to the extent of the par value of their stock was intended for the protection of the creditors of the bank or trust company, and to allow the deposits of the stockholders to be a set-off against their statutory liability would be to defeat the very purpose for which the statute was enacted.

Yours very truly,

CARY D. LANDIS,
Attorney General.INSURANCE BUSINESS—WHEN AGENTS LIABLE TO
PROSECUTION

August 11, 1931.

Dear Sir:

Replying to your favor of the 7th instant, I beg to advise that upon inquiry I fail to find that the above association is qualified to do business in this State. However, this is not the first report of the activities of said association in the State.

In my opinion, the enclosed so-called certificate of membership constitutes a mutual fire insurance policy as was held by Judge George Couper Gibbs of Jacksonville in the case of the State of Florida vs. United American, Inc., on a similar contract or so-called certificate of membership. If this policy was solicited in the State the agent soliciting the same is liable to be proceeded against for soliciting insurance business for a company not

authorized to do business in the State and if the policy was mailed from Louisiana, I would suggest that the matter be reported to the postal authorities for investigation and such action as they may take.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MUNICIPALITIES—METHOD OF SURRENDERING FRANCHISE

August 13, 1931.

Dear Sir:

Replying to your favor of the 10th instant, in which you ask to be advised whether or not your municipality has the power to surrender its charter, permit me to say that the law provides a method by which a municipality may surrender its franchise, and you will find the procedure set forth in Sections 3082, 3083 and 3084 of the Compiled General Laws of 1927.

The statute provides that upon the petition of one-third of the registered voters the Mayor shall issue a proclamation ordering an election, and that if two-thirds of the votes cast are in favor of surrendering the franchise, it may be surrendered; however, I would suggest that you read the above Sections cited for further information on the subject.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FINGER PRINTS—METHOD OF PROCEDURE

August 13, 1931.

Dear Sir:

Replying to your letter of the 7th instant, addressed to former Attorney General Davis, in which you ask to be advised regarding the law governing the taking of finger prints of persons violating the law in this State, permit me to say that Chapter 13619, Acts of 1929, provides for a bureau of identification in this State, and authorizes the taking of finger prints of persons arrested for crime. No opinion has been rendered by the Attorney General on this subject because the question has never been raised or presented heretofore.

You ask for a statement of the practice in this State, with reference to the taking of finger prints, and, in reply thereto, I will say that for several years, the police departments of the larger cities have employed a person designated as a finger print expert, and a department of identification has been maintained by the police departments of the larger cities, and the authority of officers to take finger prints has never heretofore to my knowledge been questioned.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RAILROADS—MUNICIPALITY AUTHORIZED TO FIX VALUES
FOR TAXATION

August 13, 1931.

Gentlemen:

Replying to your favor of the 6th instant, in which you state that the City of Sebring takes the position that while it would like to make reduction in assessment of railroad property, but that under the decision in the case of the Seaboard vs. the City of Leesburg, you do not feel that they have authority to reduce assessments made by the Comptroller, permit me to say that the Supreme Court in the case of *Ellis vs. Atlantic Coast Line Railroad Company*, 68 Fla. 160, held "the values of railroad property as listed and reported to the City by the Comptroller may be changed to correspond with other assessment values in the City."

It is my opinion that the law is clear on the proposition that a municipality is authorized to fix the values of railroad and all other property for the purpose of taxation within the municipality. The law requires a "uniform and equal rate of taxation and a just valuation of all property, both real and personal." If there is too marked a difference between the assessed valuation in the City of Sebring as to railroad property and other property, under the decisions of our courts this would constitute a discrimination, as the court held in the case of *Roberts, Tax Collector, etc., vs. American National Bank of Pensacola, etc.*, a copy of which is enclosed.

Yours very truly,

CARY D. LANDIS,
Attorney General.BARBERS—MUNICIPALITY EMPOWERED TO IMPOSE
LICENSE, ETC.

August 13, 1931.

Dear Sir:

Replying to your favor of the 7th instant, in which you state that the City of Miami by ordinance has practically the same rules and regulations governing barber shops as are imposed by the provisions of Senate Bill 124, known as the Model Barber Bill, and in which you state that the State license and a municipal license would be exorbitant and that the enforcement of the State rules and regulations and those of the municipality would be a duplication, permit me to say that Section 23-A of Senate Bill 124, Chapter 14650, Acts of 1931, reads as follows:

"Nothing contained in this Act shall be construed to prevent any municipal government in this State from passing and enforcing reasonable laws and regulations governing the barber practice within its limits."

In view of the above quoted provision, it appears to me that a municipality does have the power to impose a license and to enforce rules and regulations independent of the State law, regardless of how unnecessary it may appear to be.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PODIATRY—UNLAWFUL TO PRACTICE WITHOUT LICENSE

August 15, 1931.

Dear Sir:

Replying to your favor of the 6th instant, with which you enclose copy of Senate Bill No. 87, which became a law May 26, 1927, and which created the Board of Examiners of Podiatry, permit me to say that the Act referred to is now Chapter 12197, Acts of 1927. Section 1 of said Act defines the practice of podiatry as meaning the diagnosis, medical, surgical and mechanical treatment of ailments of the human foot and leg, except the amputation or the use of any anesthetic other than local: Section 1 of the same Act provides it shall be unlawful for any person to practice or assume the duties incident to podiatry without first obtaining from the State Board of Examiners a license.

Under the definition contained in Section 1 of the Act, it is my opinion that a person calling himself an Othopedic Technician and who undertakes to treat foot ailments or to fit any appliance to the human foot and at the same time holds himself out to the public as being engaged in the practice of podiatry would be violating the law if engaged in such practice with the license granted by the Board.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FREE-HOLDER—DEFINITION

August 18, 1931.

Dear Sir:

This refers to your favor of the 15th instant, and I would state that I am clearly of the opinion that a man is not and does not become a free-holder because he is living with his wife on property belonging to her. The man himself must own real estate before he is a free-holder. The fact that a wife is a free-holder and the husband lives with her on the property does not make him a free-holder, and the same rule applies to the wife.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SCHOOL FUNDS—EXPENDITURE

August 19, 1931.

Dear Sir:

This refers to your favor of August 12th.

It is my understanding that funds apportioned on a unit basis must be expended within the district where the unit is located and for that particular unit for salaries. In other words, the State money is apportioned and there is so much for each unit.

You ask the question whether you can use the entire State apportionment on the unit basis amounting to \$15,000.00 in the Bradenton district upon the high school alone. This, in my opinion, you cannot do. The only means of diverting any money under the State apportionment from the specific unit would be as is provided for the school years 1931-32, 1932-33, under Subsection (b) of Section 4 of Senate Bill No. 318, Chapter 14829, Acts of 1931. This diversion, however, applies only where there is an apportionment which exceeds the salary paid by the School Board.

Very respectfully,

CARY D. LANDIS,
Attorney General.

SQUIRRELS—PETS PERMITTED UNDER CERTAIN CONDITIONS

August 19, 1931.

My Dear Sir:

This refers to your favor of the 12th.

With reference to the law governing the black and gray fox squirrels of the State, it is my opinion that one has no right to capture and keep these squirrels in captivity. If I understand your situation correctly, you had the gray fox squirrel as a pet or tame squirrel at the time the law was passed with reference to capturing black or gray fox squirrels, and that you have had it as a pet ever since.

It is my understanding that the present administration of the game law under the Honorable C. C. Woodward has had the policy of permitting anyone who had wild game as pets and in captivity prior to the taking effect of the game law to keep such pets and not disturb them and they do not intend to disturb such persons with reference to such pets. I have confirmed this by taking the matter up with Mr. Woodward, and he advises me that it has been his uniform policy not to interfere with anyone who had a fox squirrel or deer in captivity prior to his coming into office, and that he did not know of your being arrested, and if the facts are as above stated, he is very sorry indeed that this has occurred. He further advises me that he would take the matter up with the Game Warden and look into it, and if the facts are

as stated in your letter, he will ask the Game Warden that you are relieved from any further annoyance in this matter.

Personally, my dear Judge, I am sorry that this has occurred, and I am also sorry that I could not get this letter to you earlier, and I trust that the matter may be satisfactorily adjusted.

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

RACING ACT—PERMITS NOT TRANSFERABLE

August 19, 1931.

Gentlemen:

This refers to your favor of the 12th instant, relative to permit granted to L. M. Gerstel, Receiver in Bankruptcy for the West Flagler Amusement Company, and you raise the question as to whether or not the Receiver in Bankruptcy can sell and dispose of the racing permit granted to such Receiver.

Section 21 of the Racing Act, which is Senate Bill No. 361, is as follows:

"No permit or license granted under the provisions of this Act shall be transferable or assignable."

If this racing permit had been granted to the West Flagler Amusement Company, it seems to me clear that under the terms of the Act, the West Flagler Amusement Company could not sell or transfer the racing permit. The West Flagler Amusement Company having been placed in the hands of a Receiver, the Receiver then, under and by virtue of the order of the Court, stands in the place and instead of the West Flagler Amusement Company, and while the Court could unquestionably order the sale of any property that could lawfully be sold under the law, yet inasmuch as the law specifically provides that no permit shall be transferable or assignable, it seems to me that a sale by the Receiver would not pass title or carry any rights so far as this racing permit is concerned in the face of the positive prohibition contained in Section 21 of the Act.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—CAPITAL STOCK TAX REQUIRED

August 19, 1931.

Gentlemen:

Replying to your favor of August 11th, I beg to advise in answer to your question as to whether a corporation with a capital stock of \$200,000.00 would pay a fee of \$100.00 or \$200.00, I would state that by reading Section 2 of the

Act you will see that a corporation of \$200,000.00 capital would have to pay a fee of \$100.00. Also by reading the Act you will see that a corporation with a capital stock of from \$200,000.00 to \$500,000.00 would have to pay a tax of \$200.00.

Very respectfully,

CARY D. LANDIS,
Attorney General.

BANKS—CAPITAL STOCK REDUCED

August 19, 1931.

Dear Sir:

This refers to your favor of August 11th in which you make inquiry as to whether any action has been taken with reference to the reduction of the capital stock of the First Trust and Savings Bank of your City.

I beg to advise you that after some considerable correspondence and the termination of some of the litigation, it seems that all objections were removed with reference to the reduction of the capital stock of this institution. The Comptroller had a further examination made of the institution and approved the reduction of the capital after some recommendations and the withdrawal of the various objections. The amendment has been made and the capital reduced to \$100,000.00, and I trust that this may work no hardship upon any one interested or concerned.

Our law with reference to the reduction of capital stock of institutions of this character is very meagre and more or less indefinite and there seems to be nothing left to do except permit the amendment and it is my thought that the institution was entitled to this on the record as it was shown here.

Very respectfully,

CARY D. LANDIS,
Attorney General.

FEES—COUNTY JUDGES AND JUSTICE OF THE PEACE

August 19, 1931.

Dear Sir:

Replying to your favor of the 15th instant in which you ask to be advised regarding the proper cost to be charged by County Judges and Justices of the Peace in criminal cases permit me to say the proper charges are those provided by Section 3084, Revised General Statutes of 1920.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SALESBOARDS—WHEN OPERATION BY MERCHANTS LAWFUL

August 19, 1931.

Dear Sir:

Your letter of the 11th instant addressed to the Adjutant General, has been referred to this office for reply. We note that you wish to be advised whether or not the operation of salesboards designed to be used by merchants for business stimulation purposes only would be illegal in Florida.

Permit me to say that if the salesboards you have in mind are not a gambling device and should not be used as such their use in the State of Florida would not be illegal.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RACING ACT—QUALIFICATION TO VOTE

August 19, 1931.

Dear Sir:

Replying to your favor of the 12th instant in which you ask to be advised for what years poll taxes should be paid in order to qualify one to vote in an election to be held under the Racing Bill passed by the Legislature of 1931 and whether or not it is necessary for the electors to re-register in order to be qualified to vote in such election permit me to say:

It is my opinion that for an elector to be qualified to vote it would be necessary to have paid poll tax for the years 1929 and 1930. It is my opinion that re-registration of electors is not necessary but that the books should be opened for the registration of electors who are otherwise qualified whose names are not now on the registration books as electors.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RACING ACT—REQUIREMENTS FOR HOLDING ELECTION

August 20, 1931.

Dear Sir:

Replying to your favor of the 17th instant requesting opinion on the question of whether or not an election can be held on two permits granted under the Race Track Bill at the same time provided there is a separate ballot for each permit, and whether or not it is necessary to publish the bill in its entirety at the time notice of the election is given, and whether or not the election on the permits under the bill could be held at the same time an election is held in Duval County on the question of a "free bridge" or when an election is called on some other matter not limited to free holders, permit me to say:

Replying to your first question, we see no reason why an election could not be held on two permits at the same time provided there is a separate ballot for each permit.

Replying to your second question permit me to say we find nothing in the statute requiring it to be published in its entirety at the time the notice of the election is given. In fact, we do not find that any part of the Act is required to be published. The only requirement in the statute relative to publication relates to the publication of notice of election as provided by Section 6.

Replying to your third question permit me to say we find nothing in the Act which could be construed to prohibit the County Commissioners calling an election under Section 6 of the Race Track Bill to be held on the same day that any other special election is to be held.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PUBLICATION OF TAX SALES—NEWSPAPER DESIGNATED

August 22, 1931.

Dear Sir:

Replying to your favor of the 20th instant in which you ask to be informed relative to the legal requirements for publication of municipal tax sale permit me to say it appears that Section 3004, Compiled General Laws of Florida, contemplates the publication in a newspaper, if there be a newspaper published within the said city or town.

Senate Bill No. 58, Chapter 14830 Acts of 1931, provides that no notice of publication required to be published in a newspaper shall be published in any newspaper except one which has been continuously published at least once a week and shall have been entered as second class mail matter at a postoffice in the county where published for a period of one year next preceding the first insertion of such publication, or in a newspaper which is a direct successor of a newspaper which has been published, or in a newspaper being published at the time of the passage of this Act; provided, however, that nothing therein contained shall apply where in any county of the State of Florida there shall be no newspaper in existence which shall have been published for the length of time prescribed by this Act.

Not having access to your municipal charter, and it not being the duty of the Attorney General to render opinions based on municipal charters and ordinances, I decline to express an opinion on the other questions contained in your letter.

You may be assured that the Attorney General is quite busy performing the duties imposed upon him by the Constitution and Laws of Florida, and

while it would be a pleasure to act as counsel for the several municipalities and the individuals of the State, it is not humanly possible to do so. I feel sure that you will understand and appreciate my position.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FREE SCHOOLS—APPLICATION OF LAW

August 22, 1931.

Dear Sir:

Replying to your favor of the 19th instant in which you request an opinion on House Bill No. 457, Chapter 14892, Acts 1931, the title of which reads as follows:

"An Act providing for a Minimum of Eight Months Free Schools in the Several Counties of the State of Florida, in both Elementary and High Schools each Year; Providing for an Appropriation to Increase the County School Fund and Regulate the Expenditure of Such Fund and Providing that all Laws and parts of Laws in Conflict with this Act be Repealed."

Section 1 of the Act provides that it shall be the duty of the Boards of Public Instruction of the several counties in the State to provide a minimum of eight months free schools, both elementary and high school, each year.

Section 2 of the Act appropriates \$7,500,000.00 less the credit of the 1 mill State ad valorem tax and less whatever sum may be derived by the State as interest on State deposits in banks of the State, and less whatever other amounts may be appropriated to the County School Fund by an existing law.

It is my opinion that the right of a county to participate in the Fund provided for by this Act is dependent upon the Boards of Public Instruction of the several counties complying with Section 1, which makes it the duty of the Boards of Public Instruction to provide a minimum of eight months free school, both elementary and high school, each year.

From the title and the terms of Section 1 and 2 of the Act I think that it was the evident purpose and intent of the Legislature to provide a fund sufficient for an eight months school, both elementary and high school, in the several counties of the State. If any particular county, by its method of operating schools, defeated the evident Legislative intent and purpose I think that the State Superintendent of Public Instruction would be authorized to withhold his approval of participation by that county in the Fund in proportion to the extent and degree to which the particular county failed to comply with the provision of Section 1, making it the duty of the School Board to provide a minimum of eight months free school, both elementary and high school, each year.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DIVORCE—FINAL DECREE SHOULD APPEAR OF RECORD

August 20, 1931.

Dear Sir:

Replying to your favor of the 18th instant in which you state that the Judge of the Circuit Court has granted you a divorce and that your attorney has refused to have the final decree recorded, and in which you ask to be advised whether or not your attorney has the right to keep the decree from being recorded, permit me to say:

If a final decree of divorce has been granted it would be of record in the office of the Clerk of the Circuit Court, where you could procure a copy of the decree. If the final decree has been granted we know of no way in which your attorney could prevent its being made a matter of record in the office of the Clerk of the Circuit Court of the county in which the decree was granted.

It is not the policy of this office to advise citizens regarding their private legal troubles as the duties imposed upon the Attorney General by the Constitution and laws of Florida demand so much time and effort that in the nature of things it is impossible to advise the individual citizen, even on legal matters of public interest. However, we have made an exception of your case in this instance.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MOTOR VEHICLES—WHEN FLORIDA LICENSE TAG REQUIRED

August 25, 1931.

Dear Sir:

Replying to your favor of the 24th instant in which you ask to be advised regarding the statute affecting Georgia farmers selling farm products in Florida permit me to say Section 3, Chapter 13874, Acts of 1929, reads as follows:

"That all persons and corporations offering for sale farm or grove products grown in any state other than Florida and products manufactured therefrom shall be exempt from all forms of license tax, State, County and Municipal, when the same is being offered for sale or sold by the person or corporation producing the said products, and when the State where the farm or grove product offered for sale is grown gives and affords to Florida farm and grove produce sellers or peddlers this same exemption as to license tax."

The question of whether or not you would be required to have a Florida license tag on your truck will depend entirely upon the purpose for which your truck is used in Florida. The Motor Vehicle Commissioner of Florida has ruled, and we think correctly, that if a Georgia farmer or produce mer-

chant hauls his goods into Florida using his own trucks and delivers his entire load to a merchant that he would be required to have a Florida license tag, but that, on the other hand, if he should peddle his load and sell in competition with Florida merchants he would be required to have a Florida license tag.

The Attorney General of your State is familiar with the provisions of the Law of Reciprocity between the State of Georgia and the State of Florida. If you should desire further information permit me to suggest that you write the Attorney General of Georgia.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SCHOOL BOARD—NOT AUTHORIZED TO PAY CERTAIN OBLIGATIONS FROM DISTRICT FUNDS, OR TO CHANGE MILLAGE

August 26, 1931.

Dear Sir:

Replying to your letter of the 24th instant permit me to say the School Board has no authority to pay county general fund school obligations from the district funds. Neither the School Board nor the trustees have authority to change millage in a Special Tax School District. The millage can be changed only by vote of the free holders of the District.

Very truly yours,

CARY D. LANDIS,
Attorney General.

JUSTICE OF THE PEACE, COUNTY JUDGE—FEES CERTAIN CASES

August 28, 1931.

Dear Sir:

Replying to your favor of the 26th instant in which you state that the attorneys for the Board of County Commissioners of Hillsborough County have advised the County Commissioners that unless the Justice of the Peace or County Judge complies with the provisions of Section 8490 of the Compiled General Laws of Florida, requiring payment in advance or security for costs of process and service, that a Constable serving process issued and delivered to him by the Justice of the Peace or the County Judge is not entitled to compensation for making an arrest where the prisoner is discharged without information having been filed against him, and that this conclusion is sought to be fortified by the Supreme Court decisions in the cases of

State vs. McMillan, 55 Fla. 254.

Simmons vs. State, 71 Fla. 340.

Barrow vs. State, 77 Fla. 773.

Permit me to say the County Attorneys evidently have in mind Section 8488, Compiled General Laws, which reads as follows:

"Whenever a committing magistrate holds to bail or commits any person to answer to a criminal charge in a county court, a criminal court of record, or a circuit court, and any information is not filed nor an indictment found against such person, the costs of such committing trial shall not be paid by the county, except the cost for executing the warrant."

The cases of *State vs. McMillan* and *Barrow vs. State* sustained the Section of law above quoted. The opinion of the Court in the case of *Simmons vs. State* was based on Section 8490 of the Compiled General Laws.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WIDOWS—PENSIONS ALLOWED

August 31, 1931.

Dear Sir:

Replying to your favor of the 29th instant in which you state that you would like to know the essence of the law concerning pensions for widows who have children of school age and no means of supporting them permit me to say Chapter 7920, Acts of 1919, Laws of Florida, authorizes the County Commissioners of the several counties of the State of Florida to provide in the annual budget of the general fund an item for widows' pensions. Permit me to suggest that you take this matter up with the clerk of the Circuit Court of the particular county in which you are interested.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FARM AND GROVE PRODUCTS—GEORGIA PRODUCER NOT REQUIRED TO PAY LICENSE TAX

August 31, 1931.

Dear Sir:

Replying to your favor of the 28th instant in which you ask to be advised whether or not a license is required of a Georgia producer of grove or farm products in the State of Florida permit me to say:

A producer of grove or farm products from the State of Georgia offering such products grown by himself for sale is not required to pay a state, county or municipal license tax.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT ELECTION—QUALIFICATION
TO VOTE IN RE CONSOLIDATION

August 31, 1931.

Dear Sir:

Replying to your favor of this date in which you ask to be advised regarding electors who are qualified to vote in a special election held for the purpose of consolidating two special tax school districts permit me to say:

An elector, to be qualified, must be a resident of one of the districts involved in the election, must be a qualified elector therein, which includes registration and payment of poll tax for the years 1929 and 1930 unless exempt from the payment of poll tax, and such elector must have paid a tax on real or personal property located in the district for the year next preceding such election.

Yours very truly,

CARY D. LANDIS,
Attorney General.

NON-RESIDENT—ELIGIBLE TO ACT AS ADMINISTRATOR

August 31, 1931.

Dear Sir:

Replying to your favor of the 25th instant in which you state that you wish to be advised whether or not there is any reason why the courts of Florida would not recognize an application from you for letters testamentary in this state permit me to say Section 5524 of the Compiled General Laws of Florida reads as follows:

"Non-residents, if residing in the United States, may be appointed administrator or have letters testamentary upon the same terms and conditions and subject to the same rules and restrictions as residents of this State. Every such non-resident executor or administrator shall have his postoffice address recorded with the County Judge and shall designate some resident as his agent or attorney, whose name and address shall also be likewise recorded."

We know of no statute which would preclude the courts of Florida recognizing your application for letters testamentary in this state provided there is a compliance with the statutes.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RACING ACT—CONSTRUCTION CERTAIN PORTIONS

September 2, 1931.

Dear Sir:

This refers to your favor of August 25th, in which you request a statement from me as to the construction to be placed on certain provisions of what is known as the race track law, to-wit: Senate Bill No. 361.

First, you ask the question whether the law permits a track owner to change the location of his plant after he secures a permit and license.

The law requires each applicant for a racing permit, among other things, to set out the exact location where it is desired to conduct or hold a race meeting. This, in my opinion, clearly indicates that when the voters vote upon the question as to whether or not racing shall be authorized in accordance with the permit that the voters, if and when they grant the permit or such authority by the result of the election, do so with the clear understanding that the racing is to be held at this particular place, and it is therefore my opinion that the track owner cannot change this location after the permit and license have been granted.

Second, you ask the question whether or not the holder of the permit and license would be able to conduct race meetings at a different location than that specified in his application if the proposed location proved unsuitable or unavailable.

For the reason stated above, it is my opinion that the holder of a permit and license cannot conduct his race meetings at different locations than that specified in his application, but that to do so, requires a new permit and a new license for the location at which such license holder desires to hold the races.

Third, you ask the question whether or not the holder of a permit or license would be able to change the corporate name and retain his rights under the issued permit.

I assume that you mean that the holder of the permit and license is a corporation, and then whether or not this corporation could change its name. It is my opinion that the mere change of a corporate name in accordance with the requirements of law does not change the corporate entity of any property rights involved and, therefore, this could be done so long as the change of the corporate name was done in accordance with the requirements of the law pertaining to the change of corporate names.

Fourth, you ask the question whether or not the same owner or corporation would be able to operate a number of tracks, securing permits in the same name but at different locations.

I find nothing in the law that would prevent a person or corporation from procuring permits or licenses to operate more than one track, but all of the requirements of the law as to the applications and elections would unquestionably have to be complied with reference to each track.

Fifth, you ask the question whether or not the Racing Commission has the authority to revoke a permit if it is never utilized.

Section 7 of the Act among other things contains this language:

"The Racing Commission shall have the right and authority to revoke the permit of any licenses hereunder upon the wilful violation of any of the provisions of this Act."

It is my opinion that it would be the spirit of the Act that the Racing Commission should revoke permits if they are not utilized.

Sixth, you ask the question whether or not the ownership of the permit can change hands, not from one corporation to another, but by purchase of the stock in the corporation that holds the permit.

This, in my opinion, is not a change of ownership of the permit. Where a permit is held by a corporation, it is the corporate entity that holds the permit and the change of corporate stock has nothing to do with the change or modification of the corporate entity.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

POOL TABLE, MINIATURE—LICENSE TAX REQUIRED

September 3, 1931.

Dear Sir:

Replying to your favor of the 1st instant in which you ask to be advised whether or not a license is required for the operation of miniature coin operated pool tables in the State of Florida permit me to say that a license is required. The license statute makes no distinction between a regular full grown pool table and one of the baby type.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—WHEN EXEMPT FROM PAYMENT FILING FEE TAX

September 3, 1931.

Dear Sir:

This refers to your favor of August 14th, with reference to the question which you propound as to the Florida Citrus Exchange and sub-exchanges. I would state that it is my opinion that these corporations where they have no capital stock clearly come within the exemption provided by Section 6 of Senate Bill No. 734, Chapter 14677, Acts 1931. With reference to other corporations organized with capital stock merely for the purpose of canning citrus fruit products, but where they are corporations not for profit, it seems to me that they would likewise come within the exemption set forth in Section 6 of the Act, however, if there was an actual profit going to the corporation and this profit was distributed and paid out as dividends to the holders of the stock, then it seems to me that they would not be exempt.

You ask the further question as to whether or not it would be necessary or advisable for you to report these corporations to the Secretary of State, and with reference to this I would state that I believe it would be advisable for you to make reports of these corporations to the Secretary of the State, setting up the reason for the exemption under Section 6 with reference to each corporation.

With reference to Section 5 of the Act, you will note that the Secretary of State is required to make up a list of the corporations of record in his office who have failed to comply with the provisions of the Act, and shall mail a copy of such lists to the various courts. Thus, it seems to me that in order to keep in the clear of the requirements of the law, it would be well for you to report the various corporations to the Secretary of State setting forth your claim for exemption under Section 6 in order that the entire matter might be clarified as a matter of record in the office of the Secretary of State.

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

SCHOOL FUNDS—APPORTIONMENT AND DISTRIBUTION

September 8, 1931.

Dear Sir:

Replying to your favor of the 31st ultimo in which you request me to express an opinion on the question of whether or not Section 27, Chapter 176, of McClelland's Digest has ever been repealed, and in which you state that the Section and Chapter do not appear to have ever been carried forth in any of the subsequent codifications of the statutes, that it does not appear in the Revised General Statutes of 1892, the General Statutes of 1906 or the Revised General Statutes of 1920, and that you have taken the position that it is the duty of the County Boards of Public Instruction to make an apportionment of school funds as provided by the Act of 1874, which is Section 27, Chapter 176, of McClelland's Digest, permit me to say:

Section 2 of Chapter 7838, Acts of 1919, approving, adopting and enacting the Revised General Statutes of Florida, reads as follows:

"Section 2. Statutes Repealed.—That every statute of a general and permanent nature enacted by the State of Florida, or by the territory of Florida, and every part of such statute not included in said Revised General Statutes of Florida, or recognized and continued in force by reference therein, is hereby repealed."

From the section quoted above it will be seen that if Chapter 2030, Acts of 1874, carried forth in McClelland's Digest as Section 27, Chapter 176, is not included in or recognized and continued in force by reference in the Revised General Statutes of 1920 it has been repealed.

Section 9 of Article 12 of the Constitution, adopted at general election 1926, might assist you in arriving at a correct conclusion regarding the proper apportionment of school funds. The section reads as follows:

"Section 9. Article 12. In addition to the tax provided for in Section 8 of this Article the County School Fund shall consist of the proportion of the interest of the State School Fund and of the one mill State tax apportioned to the County, all capitation taxes collected

within the County and all appropriations by the Legislature which shall with all other County School Funds be apportioned and distributed as may be provided by law and shall be disbursed by the County Board of Public Instruction solely for the support and maintenance of public free schools: Provided, that such apportionment and distribution shall be made by general law based upon some declared principle of classification to be determined by the Legislature."

Senate Bill 318, Chapter 14829, Acts of the Regular Session of 1931, has declared a principle of classification for the apportionment and distribution of the public free school funds.

We think after you have read and considered the organic provisions quoted above and the Senate Bill 318, Acts of 1931, you will reach the conclusion that even if Chapter 2030, Acts of 1874, has not been expressly repealed that it is in conflict with the constitutional provisions and subsequent acts of the Legislature and is not now applicable to the apportionment of public free school funds.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TOWN—ACT OF LEGISLATURE NECESSARY TO CHANGE NAME

September 8, 1931.

Dear Sir:

Replying to your favor of the 2nd instant in which you ask to be advised whether or not the people of your town may, by a referendum vote, change the name of the town and make the change of name effective immediately, the same to be ratified by the Legislature at its next session, permit me to say:

If your town was created by an Act of the Legislature under the name of Hollywood Beach we know of no statute which would permit a change of name by referendum vote of the citizens of the town. It is my opinion that to change the name of your town, assuming that it was chartered by an Act of the Legislature, would require a charter amendment or an Act of the Legislature abolishing and recreating the town under the proposed new name.

Yours very truly,

CARY D. LANDIS,
Attorney General.

AUTOMOBILES—TITLE CERTIFICATE EVIDENCE OF OWNERSHIP

September 9, 1931.

Dear Sir:

Replying to your favor of the 4th instant in which you state that a matter is before you at this time in which the title of an automobile is questioned and in which you ask me to express an opinion regarding the question of whether

or not the title certificate issued by the Motor Vehicle Department of the State of Florida is a bona fide bill of sale permit me to say the title certificate issued by the State of Florida is evidence of ownership and should be accepted in the courts of this State as evidence of ownership.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BONDS—IN RE EXCHANGE FOR TAXES

September 9, 1931.

Dear Sir:

Replying to your favor of the 2nd instant permit me to say the Act referred to in your letter is Senate Bill No. 852, Chapter 15054, Acts 1931, a copy of which we are enclosing herewith as per your request, and you will find that the Act does authorize municipalities to accept their own bonds in payment of municipal taxes. The Act does not authorize the payment of State and county taxes with municipal bonds. State and county taxes may be paid with county bonds. District taxes may be paid with district bonds of the district in which the tax is levied only, provided the governing board or board of county commissioners or other constituted authority of each county, district or municipality authorizes by resolution the acceptance of bonds, delinquent interest coupons or other due or past due obligations of such counties, districts or municipalities in payment of taxes.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP ACT—MORTGAGE MADE PRIOR TO ENACTMENT NOT SUBJECT TO

September 9, 1931.

Dear Sir:

Replying to your favor of the 2nd instant in which you ask to be advised whether or not it is my opinion that Senate Bill 196-XX, Chapter 15787, Acts 1931, requires a stamp on a mortgage made prior to the effective date of the Act permit me to say that it is my opinion that the Act would not apply to mortgages made prior to the effective date of the Act but that it would apply to renewals thereof.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RACING ACT—CONSTRUCTION IN RE REGISTRATION AND
VOTING

September 9, 1931.

Dear Sir:

Replying to your favor of the 25th ultimo in which you ask for my interpretation of paragraph 3 of Section 6 of Senate Bill 361, Chapter 14832, Acts 1931, entitled "An Act to Provide for a State Racing Commission," permit me to say:

In reply to your first specific question, which reads as follows:

(1) "Does this section require the registration books to be opened in each precinct."

I have held and advised the registration officer of your county that inasmuch as the registration of electors in Pinellas County is governed by Section 264, Compiled General Laws, which requires the registration books to be open at the office of the Supervisor of Registration each week day from 9 A. M. until 5 P. M. for the registration of electors for all general, special and primary elections, and that inasmuch as Senate Bill 361 does not expressly require the registration books to be sent to each precinct in the county, that the registration of electors for a special election to be held in Pinellas County may be governed and controlled by the provisions of Section 264, Compiled General Laws, which does not expressly require the registration books to be sent to each precinct or election district in the county.

Replying to your second question, in which you ask whether or not it is my opinion that a person would be eligible to vote in a special election to be held in Pinellas County if such person should register after the expiration of ten days from the time the registration books opened and prior to the second Saturday in the month preceding the month in which the election is held, permit me to say:

Inasmuch as Section 264 of the Compiled General Laws, applicable to Pinellas County, provides that this section shall be in addition to all laws now in force and applying to the duties of the registration officer and the registration of electors in said counties not in direct conflict, and inasmuch as Senate Bill 361 does not expressly require the closing of the registration books on the tenth day after the same are opened for the registration of electors, it is my opinion that the registration books in Pinellas County may legally be kept open at the office of the Supervisor of Registration and be closed as provided by Section 264 of the Compiled General Laws.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COMMON CARRIERS—WHEN AGENTS OR OFFICERS AUTHORIZED TO CARRY PISTOLS

September 9, 1931.

Dear Sir:

Replying to your favor of the 3rd instant in which you state that you are an officer of the L. & L. Freight Lines, Inc., that the Company operates a transport freight line from Miami to Jacksonville, that on several occasions recently attempts have been made by highwaymen to hold up the drivers of the trucks of the company and that the drivers sometimes have on their person considerable money, and in which you ask to be advised how the drivers of the trucks might legally carry a pistol on their person, permit me to say Section 6653, Compiled General Laws, reads as follows:

"Upon the application of any railroad, express company or other common carrier doing business in this State, the Governor shall appoint one or more special officers for the protection and safety of such carriers, their passengers and employees."

Section 6654, Compiled General Laws, defines the jurisdiction and powers of special officers appointed by virtue of the Section above quoted and Section 6655 provides that each officer appointed shall furnish a bond payable to the Governor, to be approved by the Comptroller of the State.

Section 6656 provides that such special officer shall not receive any fees or salary from the State of Florida or any county, but that their compensation shall be agree upon and paid by the carrier. Section 6657 provides that the special officers shall be commissioned by the Governor for two years and shall be removed by him at any time, in the manner and for the causes provided by law. Section 6658 provides that when a special officer makes an arrest the sheriff of the county in which such arrest is effected shall be entitled to the lawful fees the same as though such arrest had been effected by him or one of his deputies. Section 6659 provides that any person who shall have been damaged, either in his person or his property, by the wrongful act of a special officer may bring suit for the redress of such wrong on the bond of such officer. We assume that your company is a common carrier. If so, under the terms of Section 6653 it appears that it would be the duty of the Governor to appoint special officers as provided by said section upon application being duly made by the officers of the company. You will note that Section 6654 authorized special officers to carry weapons and to make arrests.

Yours very truly,

CARY D. LANDIS,
Attorney General.

HOME BREW—UNLAWFUL TO POSSESS

September 10, 1931.

Dear Sir:

Replying to your favor of the 8th instant in which you ask me to advise you whether or not under the law of Florida a person may lawfully have in his possession for his own personal use not exceeding five gallons of home brew provided he does not sell or offer any of it for sale, permit me to say:

Under the law of Florida the burden is upon one found in possession of intoxicating liquor to prove that he is in lawful possession thereof, and a person cannot lawfully acquire or possess intoxicating liquors for beverage purposes under the laws of Florida.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FARM AND GROVE PRODUCTS—WHEN RESIDENT OF ANOTHER
STATE MAY SELL WITHOUT LICENSE

September 10, 1931

Dear Sir:

Replying to your favor of the 8th instant in which you state that you wish to sell your farm products in the State of Florida and in which you ask to be advised whether or not you would be required to have a license to do so, permit me to say:

You may sell your grove and farm products grown in your grove or on your farm and offered for sale by yourself in the State of Florida without having a license to do so. This does not mean that you could buy from another person and sell in the State of Florida without a license.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX CERTIFICATES—IN RE ACCEPTANCE OF BONDS
DELINQUENT COUPONS, ETC. IN REDEMPTION

September 10, 1931.

Dear Sir:

Replying to your favor of the 5th instant in which you ask specific questions regarding the acceptance of bonds, delinquent coupons or other due or past due obligations of counties, districts or municipalities in the redemption of lands within such counties, districts or municipalities from tax sales for unpaid taxes, provided that such unpaid taxes were levied for the year 1929 and prior years, and tax certificates therefor were issued and held by the State or by the county, district or municipality subject to redemption.

In reply to your several questions permit me to say I construe the provisions of the Act to mean that county bonds may be receivable at par in the redemption of lands within such counties from State and county taxes levied for the year 1929 and prior years and that district bonds may be accepted for taxes levied in the particular district in which the land lies, but that the bonds of one district may not be accepted for taxes of another district.

Replying to your question as to whether or not a bond issued by a special road and bridge district located partly in two different counties, may be received by either county in payment of all of the taxes evidenced by a 1930 certificate issued in the county where the exchange is to be made whether the land embraced in the certificate is located in the district or not, permit me to say it is my opinion that a bond of this nature should be accepted only for the payment of the district tax on the lands lying within the district, and then only provided the governing authority of both counties had by resolution declared such bond to be acceptable in the redemption of the delinquent district taxes.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX—STATE AGENCIES NOT REQUIRED
TO PAY

September 10, 1931.

Dear Sir:

This refers to your favor of the 24th ultimo, relative to Senate Bill No. 196-XX, Chapter 15787, Acts 1931.

It is my opinion that no excise tax is required as to tax deeds issued by the Clerk of the Circuit Court, and this same rule applies to tax sale certificates issued or assigned by the Clerk of the Circuit Court. In other words, this excise tax is not required on State agencies in the issuance of the above named documents.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

FLORIDA SECURITIES COMMISSION—AMOUNT OF BOND, AND
LIABILITY

September 10, 1931.

Gentlemen:

This refers to your favor of August 24th.

Your first question is as to the extent of the liability on the \$5,000.00 bond required to be filed in compliance with the Florida Securities Commission law. It is my opinion that the total maximum liability for all purposes is \$5,000.00. In other words, when liability is created under this bond, whether it is by the dealer or by one or more of his agents, and a total judgment of

liability of \$5,000.00 is reached, that this is the full liability of the principal and securities on this bond.

Further replying to your letter, it is clearly my opinion that the \$5,000.00 bond as required in Section 11 covers the dealer and all of the salesmen registered by him. The Securities Commission is not requiring a \$5,000.00 bond for each salesman, if, however, a lone salesman is acting in his own behalf and is not registered by a dealer and this salesman is not the issuer and is not qualified as the issuer, then he must put up the \$5,000.00 bond as required by Section 11.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SEARCH WARRANT—WHEN VALID IF SERVED ON SUNDAY

September 11, 1931.

Dear Sir:

Your letter under date of September 7th addressed to Governor Carlton has been referred to this office for reply. We note that you ask to be advised whether or not a search warrant issued and served on Sunday is valid.

Section 4275, Compiled General Laws, reads as follows:

"Service or execution upon Sunday, of any writ, process or warrant, order, judgment or decree, shall be void to all intents and purposes whatever; and the person so serving or executing or causing to be served or executed, the same shall be liable to the suit of the party aggrieved, and to answer damages to him for so doing, as if he had done the same without any process, warrant, order, judgment or decree. However, if information shall be by the oaths made of two respectable persons to any judge or justice of the peace or magistrate of any corporate town, that they have good reason to believe that any person liable to have any such process, warrant, order, judgment or decree served upon him intends to withdraw himself, and escape from this State under the protection of Sunday, any officer duly authorized may, being furnished with a certificate of such information upon oath as aforesaid, under the hand of the judge, justice of the peace or magistrate as aforesaid, serve or execute such process, warrant, order, judgment or decree on Sunday, which shall be as valid and effectually done, to all legal intents and purposes, as if the same had been done on any other day of the week."

You will see from the section of law above quoted that the question of whether or not the service of a search warrant on Sunday is valid depends upon the question of whether or not the provisions of the section above quoted were complied with.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LICENSE TAX—NOT TRANSFERABLE

September 11, 1931.

Dear Sir:

Replying to your letter of the 2nd instant addressed to former Attorney General Fred H. Davis, which has been referred to this office for reply, permit me to say:

We note that you state that the Tax Collector of Holmes County wants you to pay license on a stock of goods that you moved from Crystal Lake, Florida, the 1st of January, 1931, and that you have paid the license on same on the 1st of October, 1930, and you ask to be advised whether or not you should pay a license a second time this year and why.

The license you paid the 1st of January, 1931, was probably a license to do business in a county other than Holmes County and the Tax Collector probably takes the position that your license is not transferable from one county to another, which is correct.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MASONIC LODGE—WHEN BUILDING EXEMPT FROM TAXATION

September 11, 1931.

Dear Sir:

Replying to your favor of the 7th instant addressed to Governor Carlton, which has been referred to this office for reply, permit me to say we note that you wish to be advised whether or not a lodge of Free and Accepted Masons is required by law to pay State, county and city taxes on its lodge building.

Permit me to direct your attention to the third paragraph of Section 897 of the Compiled General Laws of 1927, which provides exemption from taxation for the property of educational, literary, benevolent, charitable and scientific institutions within this State as actually occupied and used by them solely for the purpose for which they have been or may be organized. The statute contains the proviso that property of such institutions which is rented wholly or in part and the rents, issues and profits only used by such institutions shall not be exempt from taxation, and the exemption does not extend to property held by them as an investment or for speculation. The statute also contains the proviso that the exemption extends to the lower story of charitable or benevolent institutions necessarily using the upper stories for their lodge rooms and who rent the ground floor of such buildings, using said rents, issues and profits for the benefit of such charitable and benevolent purposes.

Permit me to suggest that you call this Section of the statutes to the attention of the County Attorney of Taylor County and request him to advise the Tax Assessor regarding same.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FARM AND GROVE PRODUCTS—GEORGIA FARMERS EXEMPT
FROM LICENSE TAX

September 11, 1931.

Dear Sir:

Replying to your favor of the 10th instant relative to Georgia farmers selling grove and farm products grown in the State of Georgia in this State without paying a State, county or municipal license, permit me to say the Legislature of the State of Florida enacted a statute in 1929 known as Chapter 13874, and Section 2 thereof reads as follows:

"That all persons and corporations offering for sale farm or grove products grown in the State of Florida and products manufactured therefrom, shall be exempt from all forms of license tax, State, county and municipal, when the same is being offered for sale or sold by the person or corporation producing the said products."

Section 3 of the Act reads as follows:

"That all persons and corporations offering for sale farm or grove products grown in any state other than Florida and products manufactured therefrom shall be exempt from all forms of license tax, State, county and municipal, when the same is being offered for sale or sold by the person or corporation producing the said products, and when the State where the farm or grove products offered for sale is grown gives and affords to Florida farm and grove produce sellers or peddlers this same exemption as to license tax."

The State of Georgia has by law exempted Florida producers of farm and grove products from the payment of a license tax in that State.

We agree with you that there are probably a great many people coming into the State of Florida selling grove and farm products and claiming that they are the producers thereof when they are in fact buyers and sellers of grove and farm products and in many instances probably not farmers at all. Being loyal to the citizens of Florida and having full faith in their integrity it is impossible for me to believe that a citizen of Florida might misrepresent the facts in the State of Georgia, even as we believe some of those from Georgia are misrepresenting the facts in the State of Florida.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY BOARD PUBLIC INSTRUCTION—AUTHORIZED TO
BORROW 80% EXPECTED REVENUE

September 12, 1931.

Dear Sir:

Replying to your favor of the 3rd instant, permit me to say reply has been delayed because of the great volume of business before me at this time.

I am enclosing herewith copy of Senate Bill No. 19-XX, which permits County Boards of Public Instruction to borrow sums not exceeding 86% of the revenue reasonably expected to be received from the State of Florida from the County School Fund at a rate of interest not to exceed 8%, provided the estimate of all revenue to be received from said source has been approved by the State Superintendent of Public Instruction.

You will note that no money can be borrowed until the estimate of all revenue to be received from the State County School Fund has been approved by the State Superintendent.

Relative to preparing resolution proposing to borrow money under the provisions of the Act, I should think that if a resolution is deemed to be necessary that one proposing to borrow under the terms of the Act reciting the Chapter number and setting out the essential provisions of the Act would be sufficient.

Relative to form of note to be used, we are of the opinion that the bank, individual or corporation making the loan would want to prepare the note.

We are enclosing copy of House Bill No. 457, Chapter 14892, which is the Act making the appropriation for schools, and a copy of Senate Bill 318, Chapter 14829, showing the method of apportionment, and a copy of Senate Bill No. 19-XX, Chapter 15779, authorizing the Boards of Public Instruction to borrow funds.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORPORATION ACT—CAPITAL STOCK REDUCTION

September 11, 1931.

My Dear Sir:

This refers to your favor of September 5th, and especially with reference to Section 22 of Article VI of the Corporation Act of 1925.

This Act is somewhat vague with reference to your inquiry, but it is my opinion that the meaning of the portion of Section 22 referred to in your letter is that the capital stock may be reduced, but when reduced, that the capital stock outstanding must represent actual paid in capital of not less than \$500.00. In other words, it is my opinion that you can reduce your capital stock as outlined, but when reduced to \$10,000.000 par value, this must represent actual capital in the company of at least \$500.00.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

FLORIDA STATE CANAL COMMISSION—METHOD OF SELECTING OFFICERS

September 11, 1931.

Dear Sir:

I have examined Chapter 8578, Laws of Florida, Acts of 1921, as well as Senate Bill No. 131, Chapter 14724, Acts of 1931, and it is my opinion that the new Commission of five members appointed by the Governor should select their chairman and secretary.

The law being silent as to the chairmanship and the office of the secretary, it appears to me that this power is inherent in the membership and in this way these officers should be selected.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP ACT—WHEN MORTGAGES AND ASSIGNMENTS SUBJECT TO

September 11, 1931.

Gentlemen:

This refers to your favor of the 10th instant, relative to the construction of Senate Bill No. 196-XX, Chapter 15787, Acts of 1931.

You ask the question, where mortgages are taken on chattels and a note and an assignment of salary are given with the mortgage, all covering the same loan, say for \$100.00, is it necessary that a 10 cent stamp be attached to the note and also should a 10 cent stamp be attached to the assignment of salary. It is my opinion that under the law any assignment of salary will have to bear the stamp, and any loan that is covered by a promissory note will have to bear a stamp; thus, the case you suggest will have to stand a 20 cent stamp tax.

It is possible the Legislature did not mean this, but it seems to me the language of the Act is clear.

The stamp on the mortgage should be on the note, if the note is separate and apart from the mortgage; on the other hand, if the note and obligation is simply incorporated and made a part of the mortgage, and no additional note is evidenced of the indebtedness, then the stamp must be on the mortgage. See the last paragraph of the Act on page 2.

Where the stamp is placed on the note and not on the mortgage, as a matter of practical working out, it seems to me a copy of the note, which is inserted in the mortgage, should have a note showing the amount of the documentary stamp tax attached to the original.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

TAX DEED—ALL TAX LIENS MUST BE SETTLED BY PUR-
CHASER BEFORE ISSUANCE

September 12, 1931.

My Dear Sir:

This refers to your favor of the 11th instant.

I have reviewed your file and I would state that it is my opinion that considering Chapter 14572 and especially Sections 12 and 10, that anyone applying for a tax deed must at that time pay all prior outstanding certificates held by the State of Florida and all subsequent certificates covering the land. In other words, it is my opinion that any tax liens held by the State, either before or after the issuance of the deed, must be settled and paid for by the purchaser of the tax deed at the time of such purchase.

I do not think that the State has waived or lost its claim for any unpaid taxes for which it holds tax certificates, and that these must all be cleaned up and paid before and at the time of the issuance of the tax deed.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

COUNTY BOARD PUBLIC INSTRUCTION—NOT AUTHORIZED TO
EXCEED BUDGET

September 16, 1931.

Dear Sir:

Replying to your favor of the 15th instant, in which you ask to be advised as to whether it would be a violation of a law for the Board of Public Instruction of a county to expend an amount in excess of its budget, permit me to say:

A willful departure from the budget by the school board would be as much a malfeasance in office and subject to penalty as would be a similar violation by the Board of County Commissioners.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BANKS—INTANGIBLE TAX TO BE IN LIEU ALL TAX EXCEPT AD
VALOREM

September 16, 1931.

Gentlemen:

This refers to your favor of September 14th, relative to the two mill intangible tax which becomes effective January first, 1932.

It is my opinion, and with this I am satisfied the Comptrol'ler agrees, that the two mill intangible tax is paid in lieu of all tax upon banks *except the ad valorem tax*, as to tangible *personal property* and the *real estate*.

In other words, the tangible personal property and the real estate of banks are liable for the ad valorem tax, but the two mill intangible tax is in lieu of all other tax.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LAWS, SESSION—PRINTING NOT CURRENT EXPENSE

September 16, 1931.

Gentlemen:

This refers to your favor of the 15th instant.

It is my opinion that the expense of printing the session laws in the newspapers is not a current expense within the meaning of Section 1363, Compiled General Laws. In other words, it is my opinion that it is not one of the necessary expenses in order that the Government may function.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

PROHIBITION LAW—JUSTICES OF THE PEACE HAVE NO JURISDICTION

September 17, 1931.

Dear Sir:

Replying to your favor of the 15th instant, in which you ask to be advised whether or not a license may be legally issued to a person to engage in the sale of intoxicating liquor, permit me to say that you may be assured that there is no legal authority for the issuance of a license to a person to engage in the business of handling intoxicating liquors in the State of Florida.

Under the law, the courts of justices of the peace have no jurisdiction over the enforcement of the prohibition law; therefore, as a judge of a justice court, this is a matter about which you should not be concerned.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LEGAL NOTICES—WHEN NEWSPAPER MAY LAWFULLY PUBLISH

September 17, 1931.

Dear Sir:

Replying to your favor of the 12th instant in which you state that your paper was first published June 12th, 1930, and was being published at the time of the passage of Senate Bill No. 58, Chapter 14830, Acts of the 1931 Legislature, and in which you ask to be advised whether or not your paper may lawfully publish legal notices, permit me to say:

The Act provides that no legal notice shall be deemed to have been published in accordance with the statutes providing for such publication, unless the same shall have been published for the prescribed period of time required for such publication, in a newspaper which, at the time of such publication, shall have been continuously published at least once a week, and shall have been entered as second-class mail matter at a post office in the county where published, for a period of one year next preceding the first insertion of such publication, or in a newspaper which is a direct successor of a newspaper which has been published, or in a newspaper being published at the time of the passage of this act.

It is my opinion according to the terms of the statute, that if your newspaper was being published at the time of the passage of this act, and you state that it was, it may lawfully publish legal notices.

Yours very truly

CARY D. LANDIS,
Attorney General.

SCHOOL BOARD—LIABLE FOR GASOLINE STORAGE TAX

September 17, 1931.

Dear Sir:

This is in response to your request for an opinion on the facts, which I understand to be as follows:

Your client, the Lee County School Board, desires to buy gas in car lots in Louisiana or at other refinery points outside of the State of Florida, this gas to be shipped into the State and stored and used by the School Board exclusively in the handling of its school busses, which busses are owned by the board, all of this in the transporting of school children to and from the public schools, the question being whether or not the board would be liable for the gas tax. I am clearly of the opinion that the School Board would have to pay what is termed the gasoline storage tax under Chapter 13756, Acts of 1929. You will note in Section 1 thereof that this law applies to:

"Every person, firm, corporation, municipality, county, or any subdivision thereof, etc."

This wording of the statute, in my opinion, would include the activities of the School Board of the County.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—MASTER'S DEED SUBJECT TO

September 23, 1931.

Dear Sir:

This refers to your favor of the 21st instant, relative to documentary stamp Tax Act, Senate Bill No. 196-XX.

It is my opinion that all Master's Deeds must bear the stamp tax, and the amount of the tax should be figured at 10c on each \$100.00 or fractional part thereof on the amount of the bid or purchase price. It seems to me clear that prior to the issuance of the deed there existed nothing but a lien on the property. The deed is the instrument which conveys the title and the tax should be figured on the amount for which the deed issues, entirely separate and apart from what the amount of the mortgage may have been. In the first place, the sale must be a public sale, and a second protection to the man whose property is sold is that the Court must approve the sale, and thus it is that the bid or purchase price at the sale for which the deed issues is, under the law, deemed to be a fair bid.

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CERTIFICATES OF STOCK
AND POWERS OF ATTORNEY SUBJECT TO

September 24, 1931.

Dear Sir:

This refers to your favor of September 23rd, relative to what is known as Senate Bill No. 196-XX, Chapter 15787, Acts 1931.

You ask the question whether it will be necessary for you to place stamps on all certificates of stock which are sold on the New York Stock Exchange, or other stock exchanges outside of the State of Florida, first where the stock is actually held by your institution for the account of another. As to this, the act has this language:

"On all sales, agreements to sell, or memoranda of sale, or deliveries of, transfers of legal title to shares, or certificates of stock or profits," etc.

The question then is simply whether your connection with the stock comes within either of the terms of this act. You will note the act has the expression: "memoranda of sales or deliveries of." It is my opinion that the case which you put to me in your letter comes within this section, for I assume that you do make memoranda of the sales or of the deliveries. Secondly, where as agent for your customer, you have the right to direct delivery of the stock which is held outside of the State of Florida, and which certificate is not at the time of the sale in your actual possession.

It seems to me that of necessity you would have to make some memoranda of the sale or of the delivery, and when you do so this would bring you within the terms of this act, and the memoranda of the sale or the delivery would be required to bear the tax stamp.

You ask the further question as to whether or not when the required amount of stamps have been affixed to the stock certificate which is sold an additional stamp must be affixed to the Power of Attorney printed on the back of the stock certificate or on a separate power of attorney attached to the certificate for the purpose of consummating the sale thereof. It is my opinion that every power of attorney must have the proper tax stamp attached whether it is on the back of the certificate or whether it is a separate power of attorney.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

ELECTOR—WHEN DISQUALIFIED

September 24, 1931.

Dear Doctor:

Replying to your favor of the 22nd instant, in which you ask to be advised whether or not, if a person is convicted of a felony in the Federal Courts and a fine and prison sentence is imposed, this would disqualify him as an elector, permit me to say:

It is my opinion that such person would lose his right to vote until citizenship had been restored.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CERTIFICATES OF STOCK SUBJECT TO

September 24, 1931.

My Dear Sir:

This is in reply to your favor of the 23rd instant, and I am returning you herewith copy of By-Laws of the Jacksonville Postal Credit Union, also Certificate No. 2.

Senate Bill No. 196-XX, Chapter 15787, Acts 1931, provides that:

"On each original issue, whether organization or re-organization of certificates of stock issued in the State of Florida, *or of benefits, or of interest in property*, or accumulations by any corporation on each \$100.00 of the face value or fraction thereof, 10c."

It is my opinion that the certificate such as you enclose comes within the terms of this act, and that every certificate will have to have a tax

stamp thereon, that is, every certificate issued since the law became effective, to-wit: September 24th.

You ask in your letter whether it will be lawful for your corporation to issue a receipt for installments paid on shares in amounts under \$100.00, with the understanding, however, that when this amount reaches \$100.00, a certificate of \$100.00 will be issued and the required documentary tax stamp attached. As to this I would state that you will note the law provides that the tax is 10c on each \$100.00 or fraction thereof, and it is my opinion that any receipt or certificate issued by your corporation which evidences an interest in the profits or property or accumulations of the corporation comes within the terms of the statute and will have to have a proper stamp attached.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

JUSTICES OF PEACE—WHEN ENTITLED TO FEES

September 24, 1931.

Dear Sir:

This is in reply to your favor of the 21st instant, in which you state that you have construed Sections 2833 and 8488, Compiled General Laws, with reference to cost bills against the county by justices of the peace, to mean that where the justices of the peace bound a defendant over to the county or Circuit Court, and no information was filed or indictment found against said defendant, the justice of the peace in such case will not be entitled to any fees or pay, and that only the Sheriff or officer executing the warrant is entitled to be paid.

Section 8488, Compiled General Laws, 1927, reads as follows:

"Whenever a committing magistrate holds to bail or commits any person to answer to a criminal charge in a county court, a criminal court of record, or a Circuit Court, and any information is not filed nor an indictment found against such person, the cost of such committing trial shall not be paid by the county, except the cost for executing the warrant."

You will note that the statute refers to "the cost of such committing trial." It may be that the justice is entitled to charge the regular fee for issuing the warrant, and for anything else that he may do in connection with the case, for which a fee is chargeable, prior to the trial.

We are under the impression that former Attorney General Davis in the opinion referred to in your letter did not have under consideration Sections 2833 and 8488, Compiled General Laws, because the Supreme Court of Florida has never held these statutes to be unconstitutional.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CONSTRUCTION IN RE
CERTIFIED CHECKS, CERTIFICATES OF DEPOSIT,
CASHIER'S CHECKS, ACCEPTANCES AND
NOTES

September 24, 1931.

Dear Sir:

I beg to acknowledge receipt of your letter of the 21st instant, requesting my opinion as to whether Senate Bill No. 196-XX, Chapter 15787, Acts of 1931, known as the Documentary Stamp Tax Act, requires that stamps be affixed to all certified checks, certificates of deposit, cashier's checks, acceptances and notes, for an amount less than \$100.00 on and after September 25th, 1931.

After careful consideration of the provisions of the act and of other applicable provisions of law, I am of the opinion that all of the enumerated instruments executed after September 25th, 1931, are required to have the documentary stamp tax, except cashier's checks, regardless of the amount thereof. That is to say: Certified checks, certificates of deposit, acceptances and notes, in amounts less than \$200, must bear a documentary stamp tax of 10c, the tax thereafter to be increased in multiples of \$100.00.

The said act requires the said tax on all promissory notes, non-negotiable notes, and written obligations to pay money.

Under the provisions of our negotiable instrument act, Section 6926, Compiled General Laws of Florida, 1927, where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance, and under the provisions of Section 6928, the bank upon certification of a check becomes liable to the holder. Thereupon, the certification of a check by a bank becomes a written obligation to pay money, and is therefore subject to the tax.

A certificate of deposit is, in substance and legal effect a promissory note (see Third Ruling Case Law 846), and is a written obligation to pay money and therefore subject to the tax imposed by this act.

Acceptances under the laws of Florida (Section 6904, Compiled General Laws of Florida 1927) must be in writing, and are engagements to pay according to the tenor of the acceptance, and are therefore written obligations for the payment of money, and subject to the tax imposed by this act.

Notes are specifically mentioned in the act and made subject to the tax.

A cashier's check is a check, draft, or other order for the payment of money drawn by the cashier of a bank upon either his own or some other bank, in which funds of his bank are deposited, and is not a written obligation for the payment of money as contemplated by the provisions and requirements of the act under consideration. Therefore, no tax is required on cashier's checks.

Very truly yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—ALL NOTES SUBJECT TO

September 24, 1931.

Gentlemen:

I beg to enclose you herewith copy of stamp tax Act No. 196-XX, Chapter 15787, Acts 1931. This act requires a 10c stamp on every note regardless of the amount, if less than \$200.00; and 20c for \$200.00 up to \$300.00; and 30c for \$300.00 up to \$400.00, etc.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—PROMISSORY NOTE SECURED BY CONDITIONAL BILL OF SALE SUBJECT TO

September 24, 1931.

Dear Sir:

Any promissory note secured by a conditional bill of sale or chattel mortgage, where the bill of sale or chattel mortgage is recorded in Florida, will require the documentary stamp tax.

Yours very truly,

CARY D. LANDIS,
Attorney General.CITY TAX CERTIFICATE—BILL IN CHANCERY PROPER
PROCEDURE

September 25, 1931.

Dear Sir:

Replying to your favor of the 15th instant, referred to this office by former Attorney General Davis, and in which you ask to be advised whether an individual holder of a city tax certificate can foreclose same by bill in chancery, permit me to say:

Unless there is some provision in the city charter governing the foreclosure of tax certificates, it is my opinion that a bill in chancery would be the proper procedure for the foreclosure of same.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PUBLICATION OF TAX SALES—WHEN NEWSPAPER QUALIFIED

September 25, 1931.

Dear Sir:

Replying to your favor of the 21st instant, in which you state that the Mayor of Panama City has held that your paper is not qualified as a legal advertising medium for the publication of legal notices for said city, permit me to say:

If your paper is being published in Panama City, we know of no statute which would disqualify it for the publication of legal notices. The opinion referred to in your letter, is one rendered to the Editor of the Graceville paper, in which we stated that Section 3004 provides that the tax collector of any incorporated city or town, if there be no newspaper published within the said city or town, shall advertise the sale of lands levied on for taxes by three written notices posted in three public places in said city or town.

We advised the Editor of the Graceville paper that the statute appeared to contemplate the publication of the tax sale in a newspaper, if there was one being published in the city or town.

We think, however, that if the city charter of the municipality provides for the publication by posting, and the charter was granted subsequent to the section above quoted, which is an Act of 1877, that the publication by posting would be legal.

The Supreme Court in the case of *Drake vs. Thomas*, 84 Fla. 177, 92 So. 878, held the publication of the tax sale in a newspaper published in another town to be invalid.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WAR VETERANS NOT EXEMPT FROM PAYMENT BARBER'S
REGISTRATION FEE

September 26, 1931.

Dear Sir:

Replying to your favor of the 23rd instant, in which you ask me to advise you whether or not you are exempt from the payment of an examination and registration fee under Section 17 of Senate Bill No. 124, Chapter 14650, Acts of 1931, the same being an Act providing for the examination and registration of barbers, permit me to say:

Chapter 13876, Acts of 1929, provides that war veterans, unable to perform manual labor, shall be exempt from the payment of an occupational license tax. The examination and registration fee provided for under Sec-

tion 17 of Senate Bill No. 124, Acts of 1931, is not an occupational license tax, but is an examination and registration fee for the support of the barbers' examining Board.

Therefore, the exemption does not apply under that statute.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BOUNDARIES IN RE CITY OF ST. AUGUSTINE

September 26, 1931.

Dear Sir:

In compliance with request contained in your letter of the 25th instant, I beg to advise that the Act of the Legislature of 1889, pertaining to the boundaries of the City of St. Augustine, and more particularly Section 1 of this Act is as follows:

"Section 1. The territory included within the boundaries following, to-wit: Commencing on the east shore of the North river at a concrete monument situate at mean low water mark on the north bank of Bar creek; thence south 87 degrees west to the west shore of North river at mean high water mark; thence south 82 degrees 15 minutes west along the north line of the property known as the Wilmians' tract to the center of the shell road; thence south 86 degrees 30 minutes west along the north line of the Sanchez property to the St. Sebastian river at mean high water mark; thence due west to the west shore of the St. Sebastian river at mean low water mark; thence southerly along the west shore of said river on the line of ordinary low tide to the Matanzas river at mean low water mark; thence due east to the east shore of the Matanzas river at mean high water mark; thence northerly along said shore on the line of ordinary high tide to the most northerly point of Anastasia island; thence northerly to the most southerly point of North Beach at mean high water mark; thence northerly along the east shore of North river on the line of ordinary high tide to the place of beginning: Shall be and continue a city by the name and style of the City of St. Augustine, and the citizens and legal voters of the State of Florida, from time to time, residing within such territory shall be and continue a municipal corporation by the name and style aforesaid, and shall possess all the property, property rights and rights of action and be subject to all the obligations, legal and equitable, of the city heretofore denominated the 'City of St. Augustine.'"

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—IN RE BONDS SALE,
TRANSFER

September 29, 1931.

Dear Sir:

This refers to your letter of September 26th, relative to Senate Bill No. 196-XX, Chapter 15787, Acts 1931.

It is my opinion that the amount of stamp tax to be paid upon transfer of bonds, whether at depreciated prices or not, must be measured by the face value of the bonds, the same being 10c for each one hundred dollars or fraction thereof, 10c.

It is my opinion that the stamp should be affixed to the bond when issued, as required by the Act, but when the sale takes place the stamp tax should be attached to the memoranda of sale.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BUS AND TRUCK COMPANIES—NOT LIABLE FOR CORPORATION
TAX

September 30, 1931.

Dear Sir:

This refers to your favor of September 28th.

I would state that it is my opinion that all bus and truck companies operating under a certificate issued by the Railroad Commission are free from the corporation tax for the reason that Senate Bill No. 411, Chapter 14764, Acts 1931, has this provision:

"Provided further, that the mileage tax provided for in this Section shall be in lieu of all other taxes and fees of every kind, character and description, State, County or Municipal, except ad valorem taxes levied upon the property other than motor vehicles of such auto transportation company, etc."

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

WIDOWS WORLD WAR VETERANS—NOT EXEMPT FROM PAY-
MENT OCCUPATIONAL LICENSE TAX

October 6, 1931,

Dear Sir:

Replying to your favor of the 28th ultimo, in which you ask to be advised whether or not the widow of a World War veteran is entitled to exemption from the payment of an occupational license, permit me to advise

that the statute does not authorize the exemption to apply to widows of world war and Spanish-American war veterans.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY OFFICER—SENTENCE IMPOSED VALID

October 6, 1931.

Dear Madam:

Replying to your favor of the 4th instant, in which you ask to be advised whether or not a county judicial officer has the right or power to sentence a person on a criminal charge, when such officer is himself under bond at the time for violating the law, permit me to say:

Every person is presumed to be innocent until proven to be guilty, and until the judicial officer has been removed from office, his sentences would be as valid as if there were no charge pending against him.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTION—TWO QUESTIONS MAY BE SUBMITTED ON SEPARATE BALLOTS

October 7, 1931.

Dear Sir:

Replying to your favor of the 30th ultimo, in which you state that on November 3rd there is to be held a county election under the race track law, and that you wish to submit to a vote of the people on a separate ballot at the same election a question regarding the establishment of the "De-Soto National Monument," permit me to say:

I know of no legal objection to the submission of the question to the electorate at the same time the race track election is held, provided the two questions submitted are on separate ballots.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MUNICIPALITIES—AUTHORIZED TO LEVY TAX ON MANUFACTURER

October 7, 1931.

Dear Sir:

Replying to your favor of the 3rd instant, in which you ask an opinion on the question of whether or not municipalities have the right to levy an occupational license tax on a manufacturer located in the State of Florida delivering his product by truck to other cities and towns, permit me to say:

As you know, a municipality has only such powers as are granted by the Legislature. The Legislature authorizes municipalities to levy taxes. If a municipal tax levy is arbitrary, discriminatory, or unreasonable, the courts will declare such levies to be invalid. The situation you present on behalf of your client is being encountered by manufacturers and wholesalers generally, and many complaints are being made because the municipalities are requiring the payment of license taxes, which do not appear to be fair and reasonable. But we do not know how the situation could be remedied except by an act of the Legislature limiting the powers of all municipalities regarding the assessment of occupational license taxes.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX CERTIFICATE—IN RE CLEARING PROPERTY OF TAX LIEN

October 8, 1931.

Dear Sir:

Replying to your letter of September 30th, I beg to advise that a tax deed issued by the State for State and County taxes on the property to which you hold State and County certificates for the years 1926 to 1930 inclusive, and also City of Miami certificates for 1928 to 1930 inclusive, would not preclude the holder of City of Miami certificates for the years 1926 and 1927 from enforcing his lien therefor.

Whether you take a tax deed or foreclose your tax certificates, you would also have to take up the certificates held by the other party, in order to clear the property of the lien of the City of Miami certificates for the years 1926 and 1927.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY COURTS—JURISDICTION FOR REMOVAL DELINQUENT TENANTS

October 8, 1931.

Dear Sir:

Replying to your favor of the 29th ultimo, in which you ask to be advised regarding the question of whether or not the jurisdiction to hear and determine all causes for removal of delinquent tenants lies in the county court and county judge's court, or in the county court only, permit me to say:

Section 1 of Chapter 6463, Acts of 1913, the same being 5170 of the Compiled General Laws, appears to give county courts exclusive jurisdiction in counties having county courts.

Yours very truly,

CARY D. LANDIS,
Attorney General.

HUMANE LAWS—SECTIONS OF STATUTE

October 8, 1931.

Dear Madam:

Replying to your favor of the 1st instant, in which you ask to be advised whether or not there are any "State Humane Laws," permit me to say:

Sections 7171 and 7173, Compiled General Laws of 1927, provides a penalty for cruelty to children. Sections 7358 and 7370 Compiled General Laws of 1927, apply to and provide penalties for cruelty and injury to animals.

Any lawyer of your city having the Compiled General Laws would no doubt be pleased to permit you to read the Sections cited above.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CIGARETTE ROLLING MACHINES—MANUFACTURE AND SALE
NOT PROHIBITED

October 9, 1931.

Dear Sir:

Replying to your favor of the 6th instant, in which you ask to be advised whether or not a manufacturer is free to make or sell a cigarette rolling machine operated by hand, to be sold at cigar stores in this State, permit me to say:

We know of no statute which would prohibit the manufacture or sale of such machines in the State of Florida.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MAYOR—WHEN AUTHORIZED TO ISSUE SEARCH WARRANTS

October 10, 1931.

Dear Sir:

Replying to your favor of the 7th instant, in which you ask to be advised whether or not the Mayor of a municipality has legal authority to issue search warrants for intoxicating liquors or beverages in his jurisdiction, permit me to say:

If the charter of the municipality contains a provision therein authorizing the Mayor to issue search warrants, he may legally do so. If not, the search warrant would probably be invalid.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—CONSTRUCTION CAPITAL STATE TAX,
WHEN INACTIVE

October 12, 1931.

Dear Sir:

Replying to your letter of recent date requesting my construction of the corporation stock tax Act of 1931, and opinion as to whether inactive corporations are required to pay the filing fee or tax where they show that they have been inactive during the period covered, I beg to advise that it is my opinion from reading the entire Act, that they are so required to pay the filing fee or tax, except in cases where such corporation has been adjudged bankrupt or been dissolved by order of the Court, in which case the report is required to be filed but the fee is not required to be paid.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—LEASES SUBJECT TO

October 12, 1931.

Gentlemen:

As requested in your letter of recent date, I am enclosing copy of the documentary stamp tax Act of 1931.

Referring to your question as to whether stamps are required on leaseholds, I beg to advise that they are required on all instruments of writing conveying any interest in land. A lease conveys a limited interest in lands, to-wit: The right of possession during the life of the lease and the enjoyment thereof for the purpose for which the lease is executed and to that extent conveys an interest in the land and is required to carry the stamp.

The tax is upon the full amount of the consideration, without reference to whether it is payable by the month or by the year or any other period.

Yours very truly,

CARY D. LANDIS,
Attorney General.CORPORATIONS—APPLICATION OF LAW IN RE FORFEITURE
CHARTER PRIVILEGES

October 12, 1931.

Dear Sir:

Replying to your letter of recent date with reference to the forfeiture of the charter of a corporation by failure to make the report required by Senate Bill No. 734, Chapter 14677, Acts 1931, and whether such forfeiture would have the effect of making the stockholders of the corporation liable therefor, it is my opinion that the failure to make the required report and the forfeiture by reason thereof, would not have the effect of making

the stockholders liable for the tax, nor affect their right to again form a corporation, provided it is not in fact a re-incorporation for the purpose of reviving the charter rights forfeited thereby.

In my opinion, however, the corporation could not make the application for dissolution under the provisions of Section 6020 of the Compiled General Laws of Florida, because Section 5 of Senate Bill No. 734 provides that any corporation failing to comply with the provisions of the Act shall forfeit its corporate and charter privileges, and shall not be permitted to maintain any action in any Court in this State until such reports are filed and all fees due under said Act are paid.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—ALL INSTRUMENTS CONVEY-
ING INTEREST IN LAND SUBJECT TO

October 12, 1931.

Dear Madam:

Replying to your letter of recent date with reference to the requirement for a documentary stamp on contracts for deeds, I beg to advise that it is only such instrument as conveys some interest in land that is required to have the stamp.

If an agreement or contract for a deed conveys any interest in land, then it is required to have the stamp. Otherwise, not.

Very truly yours,

CARY D. LANDIS,
Attorney General.

BANK AND TRUST COMPANIES—CLAIMS MUST BE FILED WITH
LIQUIDATOR WITHIN ONE YEAR

October 13, 1931.

Dear Sir:

Replying to your recent inquiry with reference to filing claims against banks and trust companies, and the time for bringing suit on such claim, I beg to advise that while Section 6104 of the Compiled General Laws requires all claims of every kind and nature against a State bank or trust company, that has been placed in the hands of a liquidator, to be filed with the liquidator within one year from the date of the qualification of such liquidator, and that no claims not so filed within twelve months from the date of qualification of the liquidator shall be included by the liquidator or Comptroller

in the distribution of the assests, yet this does not apply to the bringing of a suit on such claims, after the filing of the claim.

In other words, the suit may be brought at any time within the limitation period fixed for that class of action.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—RENEWAL NOTES
SUBJECT TO

October 14, 1931.

Gentlemen:

Replying to your letter of the 12th instant, relative to the requirement for a documentary stamp on notes on which the interest and part of the principal is being paid, but where no new note is given, I beg to advise as my opinion that so long as there is no renewal of notes executed and delivered after the effective date of the documentary stamp tax Act, that no stamps are required.

This would not apply, of course, where mortgages securing such notes were later than the effective date of the Act, filed for record. Of course, any extension of the note in writing amounting to a renewal, would be required to have the stamp.

In other words, the law would not permit any circuitry to defeat the intent of the Act.

Yours very truly

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CONSTRUCTION IN RE
NOTES, DEEDS, CONTRACTS AND MORTGAGES

October 14, 1931.

Gentlemen:

I have your letter of the 7th instant, propounding four questions with reference to the application of Senate Bill No. 196-XX, Chapter 15787, known as the Documentary Stamp Tax Act of the Legislature of 1931, which I will undertake to answer in the order of the questions propounded.

1. Where land is sold on credit and a note or other written obligation to pay money is executed therefor, the note or other written obligation to pay money must have the stamps attached on the full amount or consideration involved. If and when a deed is later executed, the deed likewise must have the stamps for each \$100 of the consideration thereof.

2. The contract to purchase or promissory note or written obligation to pay money in whatever form executed is required to have the stamps attached, whether the contract to purchase is recorded or not.

3. Where property is encumbered by a mortgage, either the mortgage or the instrument in writing secured thereby must have the documentary stamps for the full consideration, and if the property is deeded later by the owner to the mortgagee in satisfaction of the mortgage, the deed must carry the stamps covering the full consideration. That is, the amount for which the deed was executed to satisfy.

4. Both deeds mentioned in your example No. 4 are required to have the stamps. In other words, it matters not how many conveyances there are in one transaction. Each deed is required to bear the stamps.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—INTERPRETATION IN RE
INSTRUMENTS FILED FOR RECORD AND DUTIES CLERKS
CIRCUIT COURT

October 14, 1931.

Gentlemen:

It is my interpretation of Senate Bill No. 196-XX, Chapter 15787, Acts 1931, that documentary stamps are required on all instruments filed for record subsequent to the effective date of the Act, although such instruments may have been actually executed and delivered prior thereto.

There is nothing in the Act to prohibit the clerk of the circuit court from recording instruments required to have the stamp to which the stamps are not attached. But the act makes it a criminal offense to refuse or fail to attach the required stamp, and likewise makes it the duty of the several clerks of the circuit courts to report to the Comptroller the names and addresses of any and all individuals, firms or corporations who shall fail to have affixed thereto the required amount of stamps on any conveyance or taxable instrument or document which may be recorded in their respective offices.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CONDITIONAL SALE CON-
TRACTS AND ASSIGNMENTS SUBJECT TO

October 14, 1931.

Dear Sir:

I would respectfully prefer not to enter into an argument over my interpretation of the above Act, but it is my view that both conditional sale contracts and the assignment thereof are required to have the documentary stamp attached thereto.

This applies, of course, only to the making or assignment of such instruments in the State of Florida.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—WHEN STOCK CERTIFICATES TRANSFERRED BY NON-RESIDENT SUBJECT TO

October 14, 1931.

Gentlemen:

Replying to your letter of the 3rd instant, with reference to whether the above Act applies on transfers of corporate stock of a Florida corporation where such transfer is made by non-residents of the State of Florida and the new stock certificate issued by the transfer agent in New York, I beg to advise:

Paragraph 1 of Section 1 of the Act makes the provisions thereof applicable only to transactions in the State of Florida. But I am of the opinion that the holder of new stock certificate issued out of the State of Florida could not enforce his rights under such new stock certificate in the State of Florida without having the stamps attached thereto.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FLORIDA SECURITIES COMMISSION ACT—IN RE SECURITIES HELD IN ESCROW

October 14, 1931.

Dear Sir:

Replying to your recent inquiry, I beg to advise as my opinion that under the provisions of Section 14 of Chapter 14899, Acts of 1931, securities placed in escrow with the commission may be withdrawn only when all other stockholders who have paid for their stock in cash, shall have been paid a dividend or dividends aggregating not less than six per cent shown to the satisfaction of said commission to have been actually earned on the investment in any common stock so held, and in case of dissolution or insolvency during the time such securities are held in escrow, the owners thereof shall not participate in the assets until after the owners of all other securities shall have been paid in full.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RECKLESS DRIVING—LAW APPLICABLE

October 14, 1931.

Dear Sir:

Section 1318 of the Compiled General Laws of Florida, 1927, making the driving of a motor vehicle weighing less than 5,000 pounds upon the public highways of the State outside the corporate limits of any incorporated city or town at a rate of speed in excess of 45 miles per hour, *prima facie* evidence of reckless driving, is still in effect.

This is in reply to your recent inquiry on this subject.

Yours very truly,

CARY D. LANDIS,
Attorney General.

APARTMENT HOUSES—LAW REPEALED, BUT PRIOR TAXES
NOT AFFECTED

October 14, 1931.

Dear Sir:

House Bill No. 185, Chapter 14644, Acts of the Regular Session of the Legislature of 1931, repealed Subsection (d) of Section 6 of Chapter 14491, Acts of 1929, imposing a license tax of 50c for each room, and 25c for each bathroom in apartment houses furnished and rented to transients, renting two rooms or more, but this does not affect the taxes due prior to the passage of House Bill No. 185.

I am writing you at the request of Governor Carlton, who has referred your letter of September 24th to me for attention.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—REQUIRED TO FILE REPORT AND PAY FEE

October 14, 1931.

Dear Sir:

Replying to your letter of the 10th instant, I beg to advise that if your company is a corporation under the laws of Florida, or is authorized under the law to do business in the State, then you are required to file a report with the Secretary of State under the provisions of Chapter 14677 as amended by Chapter 15726, Acts of 1931, and to pay the appropriate fee on the capital stock.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CERTIFIED CHECKS
SUBJECT TO

October 15, 1931.

Gentlemen:

Replying to your letter of the 10th instant, I beg to advise that I tried to give very mature and careful consideration to the question of whether certified checks are required to have the documentary stamp, under the provisions of Senate Bill 196-XX, and it was only after a most thorough investigation and consideration that I reached the conclusion that certified checks must bear the documentary stamp.

Section 6926 of the Compiled General Laws of Florida, 1927, provides that where a check is certified by a check on which it is drawn, the certification is equivalent to an acceptance.

Acceptance, under the laws of Florida (Section 6904 of the Compiled General Laws, 1927), must be in writing and are instruments to pay according to the tenor of the acceptance, and are, therefore, written obligations for the payment of money, and, under the provisions of the fourth paragraph of Schedule A of the Documentary Stamp Tax Act, are subject to the tax thereby imposed and must have the documentary stamp attached.

Therefore, if an acceptance is a written obligation to pay money, and if the certification of a check is equivalent to an acceptance, as provided by Section 6926, then it follows that certified checks are subject to the tax imposed by the Act, and must have attached thereto the required documentary stamps.

This Act, like all other laws, may and probably will work hardships in particular instances, but the Legislature fixed the rule and that rule can only be amended or repealed by Legislative enactment. Therefore, however much I might like to vary the rule to meet different conditions and situations by my construction of this or other statutes, I am not at liberty to do so.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DEALER—DEFINITION OF

October 15, 1931.

Dear Sir:

Replying to your letter of the 8th instant, I beg to advise the word "dealer" is variously defined in "Words and Phrases."

One definition is one whose business it is to buy and sell merchandise and chattels. Another one is that he is a middle man, that is, one who is between the manufacturer and consumer. The amount of capital in-

vested or the stock carried by such person has nothing to do with determining whether such person is a dealer, but if he buys and sells as a business, paying his license tax for such privilege, he is in law a dealer and is entitled to the privileges incident to such business.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DISABLED WAR VETERANS—EXEMPT FROM PAYMENT LI-
CENSE TAX TO PRACTICE LAW

October 16, 1931.

Dear Sir:

Replying to your letter of the 10th instant, I beg to advise that in my opinion lawyers who are disabled war veterans are under the law exempt from the license tax, and that this applies where they are practicing alone or as member of a firm.

The law requires a license of each member of a firm of lawyers, as distinguished from a license for a business composed of a firm. In the latter instance, the license is for the business irrespective of the number of members of the firm, whereas in a firm of lawyers each member pays his individual license; and, if he is otherwise entitled to the exemption as a disabled war veteran, the fact that he is a member of a firm does change his right to such exemption.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

DISABLED WAR VETERANS—CONSTRUCTION OF LAW IN RE
LICENSE TAX EXEMPTION

October 16, 1931.

Dear Sir:

This refers to your favor of the 14th instant, relative to the meaning of the word "mainly" as used in Section 1 of Chapter 13876, Laws of Florida, Acts of 1929.

This is a matter of practical construction. The word "mainly," it seems to me, should be construed to mean that where the Veteran himself does most of the work, that is, the major portion of the work of the business for which the license is granted. It probably does not mean that he could hire people to run a business for him, but where he himself runs the business and does the most or major portion of the work he would come within the classification of the word "mainly." I do not think the word mainly would prohibit him from having employees but it would, in my opinion, prohibit him from running the business by employees where he himself

was not the main person, that is, by his own personal efforts, in the conduct of the business.

As above stated, the word "mainly" has no peculiar significance, and everyone in a general way knows what it means and, therefore, it is a matter of practical application, dependent largely upon each particular case as it arises.

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

SCHOOL TEACHERS—SCHOOL BOARD NOT AUTHORIZED TO ISSUE CERTIFICATES IN PAYMENT OF SALARIES

October 16, 1931.

Dear Sir:

In response to your request for an opinion as to the authority of the county school board to issue certificates bearing eight per cent (8%) interest to school teachers in payment of their salary, I beg to advise that it is my opinion that there is no authority for the issuance of such certificates.

Section 566 of the Compiled General Laws of Florida, 1927, authorizes the county school board to borrow money not to exceed eight per cent (8%) per annum, for the purpose of paying any and all legitimate expenses in operating the schools in said county, limiting such authority to eighty per cent (80%) of the amount estimated by them to be required for the maintenance of the necessary common schools of their county for the current year.

This seems to exclude any authority to issue interest bearing certificates in payment of teachers' salaries. The powers of the county board of public instruction are confined to those prescribed by Statute, and there being no specific authority for the issuance of such certificates it follows, in my opinion, that the same cannot be lawfully done.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DISABLED WAR VETERANS—TAX COLLECTOR TO DECIDE IF ENTITLED TO EXEMPTION

October 19, 1931.

Dear Sir:

This refers to your favor of the 17th instant, in which you ask whether or not being a disabled veteran of the World War would be entitled to a license to run a billiard hall, barber shop and sell soft drinks and tobacco, all to be operated by you as one business.

The Statute, Chapter 13876, directs that a license shall be issued to disabled World War Veterans where the business or occupation is oper-

ated *mainly through the efforts of the licensee*, and which is used by him as a *means of livelihood, etc.*, but the Statutes seem to make two requirements, that is, after it is determined that a man is a disabled war veteran, the practical questions for the tax collector to decide are:

First: Whether the business, if it is one or more connected businesses, is *operated mainly through the efforts of the licensee*.

Second: Whether this is done as *ameans of livelihood*.

If it is determined by the Tax Collector that these facts exist, then I think a disabled veteran would be entitled to a license for each of the businesses, where they are operated as *one* business.

Yours very truly,

CARY D. LANDIS,
Attorney General

MERCHANTS—EACH PLACE OF BUSINESS USING TRADING
STAMPS SUBJECT TO LICENSE TAX

October 20, 1931.

Dear Sir:

This refers to your favor of October 15th, in which you request copy of Section 1199, Compiled General Laws of 1927, and I would state that we do not have this section printed in pamphlets for distribution, but the section is as follows:

"1199. (228.) Merchants Using Trading Stamps.—Merchants using trading stamps shall pay a license tax of two hundred and fifty dollars for each place of business where they use such stamps."

You will see that this section is very plain, and there certainly can be no question but that each place of business will have to pay the two hundred fifty dollars, regardless of the fact that it is one of a number of chain stores.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SCHOOL TEACHERS—COUNTY SCHOOL BOARD EMPLOYS AND
FIXES SALARY

October 20, 1931.

Dear Madam:

This refers to your favor of the 14th instant, and in reply beg to state that Section 561, Compiled General Laws of 1927, provides, among other things, as follows:

"Sixth.—To employ teachers for every school in the county, and to contract with and pay the same for their services: Pro-

vided, that schools shall not be located nearer than three miles to each other, unless for some local reason or necessity."

You will see by this that it is the County School Board that employs and pays the teachers, and, consequently, fixes the sum of money to be paid to each of the teachers.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SCHOOL FUNDS—POOR CHILDREN CANNOT BE FED FROM

October 20, 1931.

My Dear Sir:

This refers to your favor of the 17th instant, and in reply would state that it is my opinion that you cannot use school funds for the purpose of feeding pupils. This does not come within the category for which people are taxed to raise school funds; and it is, therefore, my opinion that you and the school board will have to use other means for raising funds to feed the poorer children in your schools.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FLORIDA SECURITIES COMMISSION ACT—WHEN COMPANY NOT REQUIRED TO PROCURE PERMIT

October 20, 1931.

Gentlemen:

This refers to your favor of the 15th instant, and it is my opinion that if a company has sold its stock and the same is a bona fide sale prior to the passage of the Securities Act, that there is no requirement in the law that the company must obtain a permit in order to make or enforce its collections on the stock sold prior to the passage of the Act.

Of course, it is clear that it would have to have been a bona fide sale prior to the passage of this Act, and not an arrangement for the purpose of avoiding the effect of the Florida Securities Act.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DIVORCE—GROUNDS AND REQUIREMENTS

October 21, 1931.

Dear Madam:

This refers to your favor of October 19th, 1931.

Insanity is not a ground for divorce in Florida. Residence is a matter of a citizen coming into this State with a determination to make this

his or her permanent home, and residence begins from the date that person comes into this State with the determination to make this State his or her permanent home. If this condition continues for more than two years, it would be a residence. It does not mean that one must stay in the State all of the time, but it does mean that this State must be the permanent home during all that time. Habitual intemperance and non-support are grounds for divorce in this State.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DISABLED WAR VETERANS—GRANTING OF LICENSE LARGELY
MATTER OF PRACTICAL APPLICATION

October 21, 1931.

Dear Sir:

This refers to your favor of the 20th instant, and in reply I would state that I feel that your interpretation of the above Chapter is correct.

It is my opinion that the granting of a license under this Act is largely a matter of practical application. The chapter, as you know, has this language, "and who at the time of his application for license as hereinafter mentioned shall be disabled from performing manual labor * * * ." It seems to me to be clear that a license is to be granted free to those who are unable to perform such labor as would give them a livelihood; and you will note further this language, "to engage in any business or occupation in the State of Florida, which may be carried on mainly through the personal efforts of the licensee, and which is used by him as a means of livelihood * * * ." It appears to me to be clear that the Legislature had in mind the granting of free license to those veterans who, by some effort on their part which constituted the main effort in the business, could by such effort produce a means of subsistence or livelihood.

Summing it all up, it seems that you have interpreted the chapter properly; yet it seems finally to be a matter of practical application.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

TAX DEED—PURCHASER TO OBTAIN POSSESSION OF
PROPERTY

October 22, 1931.

Dear Sir:

This refers to your favor of the 19th instant, and in reply would state that upon the purchase of a tax deed, it is then up to the purchaser to obtain possession of the property. The State does not undertake to place anyone in possession of the property under a tax deed.

It will be necessary for you to pursue your matter in the courts, and as to this I would suggest that you consult with an attorney in private practice.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FLORIDA SECURITIES COMMISSION ACT—PERMIT NOT NECESSARY IN CERTAIN CASES

October 22, 1931.

Gentlemen:

This refers to your favor of the 13th instant. You wish to know whether or not the Florida Securities Commission has made any ruling or interpretation with reference to the right of a number of persons getting together and discussing and forming and organizing a corporation. This has been discussed by the Florida Securities Commission, and this Commission has reached the conclusion that it is not a violation of the law for any number of people to get together for the purpose of organizing a corporation, and no permit is necessary for this purpose.

The permit becomes necessary when the corporation has once been fully organized, and thus the corporation proposes to sell its stock or securities.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PISTOL—COUNTY COMMISSIONERS HAVE AUTHORITY TO GRANT PERMIT

October 23, 1931.

Dear Sir:

This refers to your favor of the 20th instant.

There is no law in the State of Florida authorizing you to obtain a bond whereby you may carry a pistol in any part of the State. It is left with the County Commissioners of each county as to whether a permit may be granted in that particular county.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—ASSIGNMENTS OF MORTGAGES SUBJECT TO

October 23, 1931.

Dear Sir:

This refers to your favor of the 20th instant, wherein you request my opinion as to whether or not an assignment of mortgage must bear a stamp under the Documentary Stamp Act, to-wit, Chapter 15787, Laws of Florida, 1931.

Section 1 of the above Chapter, among other things, has this language, "On deed, instruments, or writings, whereby any lands, tenements, or other realty of any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers or any other person or persons, by his, her, or its direction, on each \$100.00 of the consideration therefor, 10c * * *." The assignment of mortgage in my opinion is the assignment of a lien or security or interest in real estate and must have the proper amount of documentary revenue stamps placed thereon.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

MOTOR VEHICLES—CONSTRUCTION OF LAW IN RE LICENSE
TAG TAX

October 23, 1931.

Dear Sir:

This refers to your favor of October 14th instant, relative to license tag tax liability; Chapter 14764, Acts of 1931, provided that the mileage tax provided for shall be in lieu of all other taxes and fees of every kind, character and description, State, county or municipal, "except *ad valorem taxes* levied upon the property other than motor vehicles of such auto transportation companies, and except the *gasoline tax*, and except the *motor vehicle license tax* as now or hereafter provided for by law." Thus it is, it seems to me, that the Legislature clearly intended that Chapter 14764 should in no wise affect the license tax fees.

Then later the Legislature enacted the license tag law, to-wit: House Bill No. 1-X, Chapter 15625, Acts of 1931, in which it was stated, "Nothing in this Act shall be construed to repeal any part of Senate Bill 411, Chapter 14764, passed at the regular session of the 1931 Legislature"; and, further, had this language, "Provided further, that nothing in this Act shall repeal, alter or diminish the mileage tax or fees now provided by law for motor vehicles coming under the supervision of the Railroad Commission of the State of Florida."

It is my opinion that these two clauses in House Bill No. 1-X clearly preserves the license tag fees, with reference to all automobiles.

Thus it is that I am of the opinion that the fact that one is a certified carrier is entirely immaterial, and does not in any way relieve such carrier from the regular schedule of automobile license tag tax.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CONDITIONAL SALE CONTRACT SUBJECT TO, UNLESS ENFORCED AND COLLECTED IN ANOTHER STATE

October 23, 1931.

Gentlemen:

This refers to your favor of the 21st instant, and in reply would state that it is my opinion that the conditional sale contract, which you enclose, is unquestionably a written obligation to pay money, and, therefore, would be required to have the documentary stamp tax attached, in accordance with and as required by Chapter 15787 of the Laws of Florida.

It is further my opinion that an assignment of this conditional contract of sale of personal property does not come within the terms of the Act, and the assignment does not need or require the documentary stamp tax.

You further ask the question of whether it is necessary to place revenue stamps upon conditional sale contracts when such contracts are purchased in Georgia by the Jacksonville office of the Company. With reference to this, it is my opinion that if the contracts are brought to the State of Florida for enforcement in the State of Florida, that these contracts would have to have the required stamps attached thereto. Of course, it is needless to say, if they are purchased in Georgia, enforced and collected in Georgia, then our laws would not be applicable.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CROP LIEN SUBJECT TO

October 23, 1931.

My Dear Sir:

This refers to your favor of the 20th instant, as to whether or not a crop lien requires a documentary stamp tax, in accordance with Chapter 15787 of the laws of Florida.

It is my opinion that this crop lien should have a stamp in the required amount attached, for the reason that the crop lien unquestionably is an interest in real estate to the extent that as long as the crop is not matured and until it is ready for severance, it is a part of the real estate. The same thing would apply to any mortgage that is executed subsequent to the date Chapter 15787 became effective as a law.

This, as I see it, is on the theory that even though the notes were executed prior to the day they became effective, the crop lien or mortgage itself constitutes a transfer of a lien interest on real estate covered by such crop lien or mortgage.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—WHEN CHATTEL MORTGAGE
OR CODITIONAL SALE CONTRACT SSUBJECT TO

October 23, 1931.

Gentlemen:

This refers to your favor of the 17th instant, and the questions which you propound are with reference to Senate Bill No. 196-XX, otherwise known as Chapter 15787, Laws of Florida, Acts of 1931.

A chattel mortgage or conditional bill of sale, which contains in the body of the contract or mortgage the promise to pay, and this is not evidenced by a separate note or writing then such bill of sale or mortgage shall bear the required revenue stamps; however, if there is a separate promissory note evidencing the indebtedness, then the chattel mortgage or conditional bill of sale, which is security for such note, need not bear a reveune stamp, but only a notation of the stamp attached to the note.

It is my opinion that the assignment of such instrument does not require additional stamps. If the conditional bill of sale contains therein a power of attorney, then this power of attorney should bear the additional required stamps.

Respectfully yours,

CARY D. LANDIS,
Attorney General.DOCUMENTARY STAMP TAX ACT—WRITTEN RENÉWAL OR
EXTENSION OF NOTES SUBJECT TO

October 23, 1931.

Gentlemen:

This refers to your favor of the 20th instant, in which you raise the question of whether or not the stamp tax Act requires a written extension of the mortgage note to bear the required amount of stamps.

It is my opinion that a written extension of a note is, in legal effect and so far as the stamp tax is concerned, a renewal and must bear the required amount of stamps. It is my opinion that the mere payment of interest on past due obligations is not an extension of the mortgage note and would not have to bear additional stamps. If by the extension of interest a written or a definite extension of time is granted which could be enforced in the Courts, then this would amount to a renewal and the stamps would be required.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—WHEN PROMISSORY NOTES
OF NON-RESIDENTS SUBJECT TO

October 23, 1931.

Gentlemen:

This refers to your favor of October 20th instant.

Chapter 15787, Laws of Florida, which is known as the documentary stamp tax Act requires revenue stamps on all promissory notes, etc, "made, executed, delivered, sold, transferred or assigned in the State of Florida * * *."

It is my opinion that where a party in Georgia, or some other State than Florida, purchases goods in Florida and mails his promissory note and delivers it by mail to the seller in Florida, that this transaction is such that the note fall within the Act, and that the proper amount of revenue stamps must be attached.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—MINIMUM TAX TEN CENTS

November 30, 1931.

Gentlemen:

Replying to your favor of the 24th instant, permit me to say in view of the provisions of Section 5, Schedule A, of the Documentary Stamp Tax Act, it is my opinion that where conveyance, transfer or assignment of lands, tenements, or other realty or any interest therein, is made, and the actual consideration involved is less than \$100, the minimum tax of 10c would be applicable.

Of course, it would be a violation of the statute to fail to pay the amount of the tax due, where the actual consideration amounted to more than \$100, regardless of the amount of the consideration recited in the instrument of conveyance, transfer or assignment.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—ALL DEEDS, MORTGAGES
AND ASSIGNMENTS SUBJECT TO

October 26, 1931.

Dear Sir:

This refers to your favor of the 21st instant relative to documentary stamp Tax Act.

In my opinion every deed and every mortgage and every assignment of mortgage must have the proper amount of stamps attached thereto, as is re-

quired by the Act. I find no exception, and the fact that it takes the three instruments to bring about one concurrent result in my opinion is immaterial, and makes no difference as to the amount of stamps required by law.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CRIPPLE—NOT EXEMPT FROM PAYMENT OF BARBERS
EXAMINATION FEE

October 26, 1931.

Dear Sir:

Replying to your favor of the 16th instant, in which you ask to be advised whether or not you are exempt from the payment of the barbers' examination and certificate fee because you are a cripple, permit me to say that the exemption does not apply under this particular statute.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PAINTERS SUBJECT TO PAYMENT OCCUPATIONAL LICENSE
TAX

October 26, 1931.

Gentlemen:

Replying to your favor of the 17th instant, requesting a definition of the word "contractor" or "contracting painter," which would make a person subject to the license required by statute for contracting painters, permit me to say:

We think that any person doing contracting business, where they enter into a verbal or written contract or agreement with another person to do painting, and such person employs one or more painters, would be subject to the occupational license tax required for contracting painters.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TRUST FUNDS—CONSTRUCTION OF STATUTE IN RE
INVESTMENTS IN MORTGAGES

October 26, 1931.

My Dear Sir:

This refers to your favor of the 15th instant, requesting my opinion relative to House Bill No. 842 Chapter 15064, of the 1931 Session of the Legislature, which bill was approved on June 15, 1931.

This bill provides for the investment of trust funds by trustees, corporate or individual, and also provides in what class such trust funds shall be invested. In my opinion this does not repeal the law. Funds belonging to a minor cannot be loaned for longer than one year.

It is my opinion that paragraph B of Section 1 of this Act means that the total amount invested in first mortgages shall not exceed 40% of all trust funds belonging to a corporate or individual trustee, and that it does not mean 40% of each individual trust fund.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CITIZEN—REQUIREMENT TO BECOME

October 27, 1931.

Dear Sir:

This refers to your favor of the 24th instant, and I beg to hand you herewith the inheritance tax laws of the State of Florida, which are simply the levy of such a tax as is levied by the Federal Government, and whereby eighty per cent is paid to the State of Florida instead of the entire amount being paid to the Federal Government; all of which is authorized under the Federal Laws. Other than these, we have no inheritance tax laws.

In order to become a citizen of the State of Florida, it will be necessary for your client to come to Florida with the determination of making it his permanent home. This does not mean that he has to stay here all the time, but that he must come here with the determination to make this his home, and some of the best evidences are registering for voting in the municipal and general elections, affiliation with churches and fraternal organizations.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CONSTRUCTION IN RE AGREEMENTS TO SELL STOCK, AND MEMBERSHIP CERTIFICATES

October 27, 1931.

Dear Sir:

Replying to your favor of the 18th instant, in which you ask whether or not it is my opinion that when a person becomes a member subscribing for installment stock, and is issued a membership certificate as evidence of the fact that he is a member and has subscribed for a number of shares of stock to be paid for by installments, and has paid the required membership fee, which membership or subscription certificate is at the time taxable under the Documentary Stamp Tax Act, he is later, when by such installments he pays

in the full amount of the stock so subscribed for, and is then issued a certificate of stock in the corporation, again required to pay a tax under the Stamp Act, permit me to say:

Schedule A of Senate Bill 196-XX reads as follows:

"On all bonds, debentures, or certificates of indebtedness issued in the State of Florida by any person, firm or corporation, and all instruments and documents, however termed, issued by any corporation with interest coupons or in registered form, on each \$100 of the face value or fraction thereof, 10c; provided, however, that only that part of the value of the bonds, debentures, or certificates of indebtedness issued by any such person, firm or corporation, the property of which is located within the State, shall bear to the whole value of the property described in said instrument or obligation shall be taxed hereunder.

The second paragraph of Schedule A provides that the tax is applicable on all sales, agreements to sell, or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in the property or accumulations in any corporation, or rights to subscribe for or to receive such shares or certificates.

Therefore, it is my opinion, in view of the language of the statute that the tax would be applicable on agreements to sell stock, and that the tax would be applicable to the membership certificate which is written evidence of the fact that the holder thereof has subscribed for a number of shares of stock to be paid for by installments, and that the tax would be applicable to the final issuance of the stock.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SLOT MACHINES—PROHIBITED IN STATE

October 28, 1931.

Dear Sir:

Your letter of the 24th instant, making inquiry with reference to the legality of the operation of slot machines, has been received.

In reply I beg to say that the State law prohibits the operation of any kind of a slot machine which contains an element of chance in its operation, but otherwise it is not against the law to operate slot machines which are purely vending devices for merchandise, such as chewing gum and the like. When, however, any element of chance is introduced into the machine, it is against the Florida law.

Our State Constitution, Article III, Section 23, reads as follows: "Lotteries are hereby prohibited in this State."

A Lottery is defined in Ballantine's Law Dictionary as follows: "A scheme for the distribution of prizes by chance."

Yours very truly,

CARY D. LANDIS,
Attorney General.

FILLING STATIONS—NOT SUBJECT TO CHAIN STORE ACT

October 28, 1931.

Dear Sir:

This refers to your favor of October 15th, relative to Chapter 15624, Acts of 1931.

I beg to state that the Comptroller, Mr. Amos, advises that filling stations engaged exclusively in the sale of gasoline and other petroleum products, and are not tire and tube dealers, are not subject to this tax. The reason for this is that both are dealt with under separate and distinct laws of the State of Florida.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—IN RE BUILDING AND
LOAN STOCK

October 28, 1931.

Dear Sir:

This refers to your favor of the 17th instant, with reference to building and loan stock, and the amount of revenue stamps required thereon.

Under the statement of facts as set forth in your letter, I agree with you that the full meaning of the law is that when stock subscription is made 20c stamps should be placed on the book, and 10c in stamps should be placed on each additional \$100.00, as and when paid. Each share of the stock, as I understand it, being of the par value of \$200.00.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SCHOOL TEACHERS—ALLOWED SICK LEAVE OF ON PAY

October 29, 1931.

Dear Madam:

I am in receipt of your letter of the 24th instant, making inquiry relative to the statute providing for the pay of school teachers while sick.

Answering your inquiry, I beg to say Chapter 13,881, Laws of Florida, Acts of 1929, provides for such payments and that said Act is State-wide in its provisions and applies to all counties. The Act provides for pay for 5 days in any one year, or an accumulation thereof for several years not to exceed a total accumulation of more than 20 days.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

STATUTE OF LIMITATIONS—PERSONS UNDER DISABILITY
MAY COMMENCE ACTION AFTER BEING RELEASED
SEVEN YEARS

October 29, 1931.

Dear Sir:

I am in receipt of your letter of the 24th instant, making inquiry as to the statute of limitations relative to persons under disability.

In reply I beg to refer you to Section 4657, Compiled General Laws of Florida, 1927, which provides that persons entitled to commence any action for the recovery of real property who have been imprisoned may commence suit, or action, within 7 years after being released from prison.

I note your further question as to whether or not a single man has an exemption of \$500.00 against a judgment. Answering this inquiry, I beg to say that I do not know of any law providing for such exemption.

Yours very truly,

CARY D. LANDIS,
Attorney General.

HOTEL COMMISSION—WHEN LICENSE TAX REQUIRED TO BE
PAID

October 31, 1931.

Dear Sir:

Replying to your favor of the 22nd instant, relative to whether or not you are required to have a license from the State Hotel Commissioner, permit me to say if you are operating a place where meals, lunches or sandwiches are prepared or served for pay, or a place where sandwiches are sold that are made from fresh bread and other perishable foods, an inspection license is required from the Hotel Commissioner, if you are not doing any of these things above mentioned, you are not required to have a license from the State Hotel Commissioner.

If you are operating a business such as requires a license from the State Hotel Commissioner, no doubt a Deputy Hotel Commissioner will visit you sooner or later and advise you whether or not you are required to pay the license. In the meantime, if I were in your position, I would rest easy.

Yours very truly,

CARY D. LANDIS,
Attorney General.

HOMESTEAD—SUIT TO QUIET TITLE NECESSARY

November 3, 1931.

Dear Sir:

I am in receipt of your letter without date making inquiry if there is a Florida law that states 7 years possession of a home clears the title.

Answering your letter I beg to say that I do not know of any such law, but Section 4652, Compiled General Laws of Florida, 1927, provides that no

action for recovery of real property or the possession thereof shall be maintained unless it appears that the plaintiff or his ancestor, predecessor or grantor was seized or possessed of the premises within 7 years before the commencement of such action.

The above quoted statute would be beneficial to you if you contemplate remaining on the land, but since you state that you desire to sell the same and that a flaw in the title has developed, it will probably be necessary for you to bring suit to quiet title in order for you to convey a merchantable title. There are so many angles to your proposition, as recited in your letter, I would suggest that you consult competent local counsel, who will be in position to check up on the records pertaining to the property in question.

Yours very truly,

CARY D. LANDIS,
Attorney General.

2
BANKS, INSOLVENT—CERTAIN RIGHTS OF DEPOSITORS
FORFEITED

November 3, 1931.

Dear Sir:

Replying to your favor of the 22nd instant, permit me to say.

The opinion of the Florida Supreme Court in the case of Myers vs. Federal Reserve Bank of Atlanta, 134 So. 600, appears to definitely hold that if depositors do not file claims until after dividends are paid, that they forfeit all right to participate in dividends already paid, even though claims are filed within one year.

Therefore, it would appear that the liquidator of the insolvent Bank of Alachua was standing upon his legal rights in declining to pay claims filed after the first dividend had been paid.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DISABLED WAR VETERANS—EXEMPT FROM PAYMENT
LICENSE TAX

November 3, 1931.

Dear Sir:

Bona fide permanent resident electors of the State of Florida, who are World War or Spanish American War veterans, and who were honorably discharged from the service of the United States, and are disabled from performing manual labor, are entitled to a license to engage in any business or occupation in the State of Florida without the payment of the license tax therefor, when the business is carried on mainly through the personal efforts of such veteran as a means of livelihood.

This exemption extends to State, county, and municipal taxes, and applies as long as the disability of such veteran continues.

The application of this statute is a matter of practical construction. The word "mainly" should be construed to mean that where the veteran himself does most of the work for which the license is granted. It probably does not mean that he could hire people to conduct such business or occupation for him, but applies only where he himself carried on the work of the business or occupation for which the license is granted, and does the most or major portion of the work thereof.

It was probably not intended to preclude the licensee from using some help in the conduct of such business or occupation, but since the statute uses the word "mainly," it was evidently intended to exempt only in cases where the licensee undertakes to and does carry on the major part of such business or occupation.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—PROPERTY SOLD BY
RECEIVERS NATIONAL BANKS NOT EXEMPT

November 3, 1931.

Dear Sir:

Replying to your favor of the 24th instant, in which you ask to be advised whether or not property sold by the receiver of an insolvent national bank should bear the documentary stamp tax, permit me to say:

The statute makes no exception to transactions by receivers of insolvent national banks, and therefore it is my opinion that the sale of property by the receiver of a closed national bank is subject to the provisions of the Act, and if I am wrong in this the burden will be upon the Federal authorities to make it clearly appear by the submission of court decisions definitely settling this particular question.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CERTAIN DEEDS
SUBJECT TO

November 3, 1931.

Dear Sir:

Replying to your favor of the 22nd instant, in which you state that you are confused regarding the application of the terms of the Documentary Stamp Tax Act to deeds conveying property from the mortgagor to the mortgagee in settlement of mortgaged indebtedness, in which sometimes there is a consideration of an actual nominal sum, and sometimes there is no consider-

ation at all except the cancellation of the debt, and in which you ask to be advised what would be considered the consideration for such a conveyances and the amount of stamps necessary to be placed thereon, permit me to say:

It is my opinion that the deed should have the documentary stamp in the amount of the mortgage release. However, the law has this provision:

"Provided, that when the full amount of the consideration for the execution, assignment, transfer, or conveyance, is not shown in the face of such deed, instrument, document, or writing, then in such event, the tax shall be at the rate of 10c for each \$100 or fractional part thereof of the consideration therefor."

This clause seems to me to make it clear, and it would be only a question of practical determination of the value of the deed or conveyance.

It seems to me that if the deed does not show the full face of the consideration, that then it is a matter of practical determination of what the deed of release is worth, or rather what the actual value of such deed is to the mortgagee, and then the affixing of stamps accordingly.

Regarding your second question relative to deeds issued by the Master in Chancery under decree of foreclosure, permit me to say:

The documentary stamp tax is applicable to such deeds, and where no actual consideration is shown, the amount of the tax should be arrived at as above stated.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CERTIFICATES AND ASSIGNMENTS OF STOCK SUBJECT TO

November 3, 1931.

Dear Sir:

Replying to your favor of the 22nd instant, in which you state that upon the pledge of stock as collateral security, it is the practice for the borrower to endorse in blank the transfer on the back of the certificate, and that, since such endorsement is not a sale or agreement for sale, nor does a pledge operate as a transfer of the legal title, it would appear that no stamp need be affixed under the provisions of the documentary stamp tax Act, except the 10c stamp applicable to the power of attorney provision generally contained in such forms of transfer, permit me to say:

The 3rd paragraph of Schedule A of Chapter 15787, Acts of 1931, the same being known as the Documentary Stamp Tax Act, clearly requires the documentary stamp on assignments of stock, certificates of stock in blank, whether the assignment entitles the holder to any benefit of such stock interest, rights or not.

It is my opinion, therefore, that where stock is assigned as collateral security, and endorsed in blank, that the documentary stamp tax is required. I think if you would again carefully read the third paragraph of Schedule A, you will agree with this interpretation.

Yours very truly,

CARY D. LANDIS,
Attorney General.

HOTEL—RESTAURANT LICENSE NOT REQUIRED

November 4, 1931.

Dear Sir:

Replying to your favor of October 30th, in which you state that a party runs a small hotel and a dining room in connection therewith; the dining room being primarily operated to serve meals to those who obtain lodging in the hotel, although sometimes persons obtain meals without lodging; and in which you ask to be advised as to whether, under this statement of facts, both hotel and restaurant licenses are required, permit me to say:

It is my opinion that a hotel license only would be necessary in this instance.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—TRUST DEED NOT SUBJECT TO IF STAMPS PLACED ON BONDS OR NOTES

November 4, 1931.

Dear Sir:

Replying to your favor of October 21st, permit me to say where the trust deed or mortgage is given to secure bonds or notes that it is sufficient if the documentary stamps are placed upon the bonds or notes, and a notation could be made on the margin of the deed or mortgage reciting the fact that the documentary stamps have been attached to such bonds or notes.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CONSTRUCTION IN RE MORTGAGES AND NOTES

November 4, 1931.

Dear Sir:

This refers to your favor of October 31st. It is my opinion, with reference to the stamp tax on instruments about which you write, the requirements are as follows:

I. A mortgage where there is no notes secured thereby, but which carries the obligation within itself, must be taxed.

2. All notes must bear the tax.
3. A note secured by a chattel mortgage, must bear the stamp tax, but but the chattel mortgage need not bear the stamp tax.
4. A note secured by a chattel mortgage and also by a separate instrument, which is an assignment of wages, such assignment of wages, as well as the note, must bear the stamp tax.
5. Where a note is secured by one instrument which amounts to a chattel mortgage on property and wages, the note alone needs the stamp tax.
6. Where the mortgage carries the obligation to pay money without any note, and also constitutes within itself an assignment of wages, this instrument alone would have to be stamped.

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

TAXATION—DUTY OF OWNER OF PROPERTY TO MAKE
RETURN—RECOURSE

November 4, 1931.

Dear Sir:

The statute makes it the duty of property owners to return their property for taxation at its fair tax value, and in the absence of such return it is the duty of the assessor of taxes to assess, using his best judgment and information as to values.

If the values fixed by the assessor are excessive, the property owner has his recourse before the tax equilization board, and also in the counties. Any owner of real property has the right to contest the assessment of his property on the question of valuation, and the courts are open at all times for that purpose.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY COMMISSIONER—WHEN OFFICE DEEMED VACANT

November 4, 1931.

Dear Sir:

Section 5 of Article VIII of the Constitution requires that there shall be a county commissioner in each commissioner's district of the county.

Section 461 of the Compiled General Laws of Florida 1927 provides the manner in which every office shall be deemed vacant, the fourth means being by the officer ceasing to be an inhabitant of the State, district, county, town, or city for which he shall have been elected or appointed.

If a county commissioner therefore, moves out of the district for which he was elected, and establishes his residence outside of such district, the office thereby becomes vacant.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MOTOR VEHICLES—LAW REGULATING SPEED

November 4, 1931.

Dear Sir:

Section 1318 of the Compiled General Laws of 1927, regulates the speed of motor vehicles, and fixes the limit at which the different classes of motor vehicles may be operated upon the highways of the State. This statute may be seen at the county offices.

The maximum speed of trucks and busses depends upon the weight and whether operated in the business or residence sections of cities and towns, or on the highways outside of municipalities.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECTACLES, EYEGLASSES—LICENSED OPTICIAN ONLY MAY SELL

November 4, 1931.

Dear Sir:

Replying to your favor of the 28th ultimo, permit me to say:

Chapter 14778, Acts of 1931, makes it unlawful for any person not a licensed optician to sell spectacles, eyeglasses, or lenses in the State of Florida.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SCHOOL TEACHERS—STATE NOT AUTHORIZED TO PAY INTEREST ON SALARIES DUE

November 4, 1931.

Dear Sir:

I am in receipt of your letter of the 27th ult., making inquiry as to whether or not the State of Florida can pay you and your faculty interest on money due you by Okaloosa County.

Answering your inquiry, I beg to say that I fully appreciate the position of yourself and your corps of teachers in being required to borrow money on which to live and to pay interest on the same, but I do not know of any State statute or provision whereby the State is authorized to make such payments.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LOANS, INTEREST RATE—THREE AND ONE-HALF PER CENT
NOT ILLEGAL

November 4, 1931.

Dear Sir:

Your letter of the 29th ult., addressed to Hon. Fred Davis, has been referred to this office for reply.

I note your inquiry as to the legal rate of interest on loans in this State in which you ask if $3\frac{1}{2}\%$ per month is illegal.

Section 6936, Compiled General Laws of Florida, 1927, reads as follows:

"In all cases where interest shall accrue without a special contract for the rate thereof, the rate shall be 8% per annum but *parties* may pay *contract* for a *less* or greater rate by *contract in writing*."

Section 6937, Compiled General Laws of Florida, 1927, provides as follows:

"All contracts for the payment of interest upon loan, advance of money, or forbearance to enforce the collection of any debt, or upon any contract whatever at a higher rate of interest than ten per cent, per annum, are hereby declared usurious."

Section 6942, Compiled General Laws of Florida, 1927, provides that if anyone charges more than twenty-five per cent, per annum that he shall forfeit the entire sum of the principal and interest to the party charged such usurious interest and shall be deemed guilty of a misdemeanor and upon conviction, fined not more than \$100.00 or be imprisoned in the County jail not more than 90 days, or both in the discretion of the Court.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—RETAIN TITLE CONTRACTS
SUBJECT TO

November 5, 1931.

Gentlemen:

Replying to your favor of October 30th, in which you ask to be advised whether or not where goods are sold on retained title contracts, and where the contracts amount to one hundred dollars or less, the documentary stamp tax law applies, permit me to say:

It is my opinion that it does apply to such contracts in the amount of one hundred dollars or any fractional part of one hundred.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—TRANSFER OF STOCK
SUBJECT TO

November 5, 1931.

Dear Sir:

Replying to your favor of the 31st ultimo., in which you state that there is stock of your association owned by a deceased person, and that the executor is to have the shares transferred, permit me to say that the statute requires the payment of a tax upon each transfer of stock.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—WRITTEN EXTENSIONS OR
RENEWALS OF NOTES SUBJECT TO

November 5, 1931.

Dear Sir:

Replying to your favor of October 31st, in which you ask to be advised whether or not documentary stamps are required upon a written mortgage extension agreement between the mortgagor and mortgagee, permit me to say:

It is my opinion that a written extension to a note is, in legal effect and insofar as the stamp tax Act is concerned, a renewal and must bear the required amount of stamps. It is my opinion that the mere payment of interest on past due obligations is not an extension of the mortgage note and would not have to bear additional stamps. If by the extension of interest a written or a definite extension of time is granted which could be enforced in the courts, then this would amount to a renewal and the stamps would be required.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—MORTGAGE ASSIGNMENT
AND MORTGAGE GIVEN AS COLLATERAL SUBJECT TO

November 5, 1931.

Dear Sir:

Replying to your favor of October 30th, in which you ask to be advised whether or not the documentary stamp law applies to the assignment of a mortgage on real property to which stamps have already been affixed, permit me to say the stamps should be applied to the mortgage each time it is assigned.

Replying to your second question, in which you ask to be advised whether or not where a mortgage is given as a collateral security for a note made and delivered prior to the purchase of the Act the documentary stamp is required, permit me to say, it is my opinion that the law requires documentary stamps on the mortgage.

Yours very truly,

CARY D. LANDIS,
Attorney General.BONDS, SCHOOL DISTRICT, REFUNDING—LAW APPLICABLE TO
ISSUANCE

November 6, 1931.

Dear Sir:

Replying to your letter of the 22nd ultimo, permit me to say:

School district refunding bonds to be valid must be issued pursuant to Section 17 of Article 12 of the Constitution as amended in 1924, which provides that maturity must be not more than thirty years from date of issuance in annual installments commencing not more than three years after date of issue, and that each installment shall be not less than 3% of total amount of issue.)

You will note a provision in the 1931 Act which expressly provides in substance that bonds may be issued under that Act except where the Constitution provides to the contrary.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LUNACY COMMISSION—COMPENSATION FOR MEMBERS

November 6, 1931.

Dear Sir:

Replying to your favor of the 2nd instant, in which you ask to be advised regarding the proper compensation for members of lunacy commissions, permit me to refer you to Chapter 14527, Acts of 1929, which provides that the physician is entitled to \$10.00 for each examination, and each of the other committeemen, \$4.00.

The 1929 Act also provides that all accounts accruing pursuant to said Act should be approved and paid by order of the county where the insane person resides.

Chapter 14758, Acts of 1931, reduces the fees in counties of more than 60,000 and not more than 100,000, according to the last State and Federal census. However, we do not think this applies to your county.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FISH DEALER—WHEN ENTITLED TO WHOLESALE LICENSE

November 7, 1931.

Dear Sir:

Replying to your favor of the 27th ultimo, relative to the application of your client, Mr. D. E. Ezell, for a license as wholesale fish dealer, permit me to say:

If Mr. Ezell has an established wholesale fish house, and receives orders from retailers, and delivers to his customers only, he would be entitled to a wholesaler's license, and it is my opinion that under such license he would be permitted to deliver to his customers in any county, but if Mr. Ezell does not maintain a wholesale fish house and just buys a truck load of fish, and goes out to sell them to retailers wherever he can, he would be required to have a peddler's license.

If you disagree with our interpretation of this statute, you could make a test case and have a court of competent jurisdiction decide the issue.

Very truly yours,

CARY D. LANDIS,
Attorney General.

SCHOOL BOARD—IN RE DIVERSION OF FUNDS

November 9, 1931.

Dear Sir:

Replying to your favor of the 4th instant, in which you state that the school board of your county with the consent of the trustees of the district used district bond fund money and executed notes to the district for the amount of money that was loaned to the school board from the district bond accounts, and ask to be advised whether this transaction is legal, permit me to say:

If you refer to the proceeds derived from the sale of the bonds, inasmuch as bonds are issued for a specific purpose it is my opinion that the school board would have no authority to divert such funds from the purpose for which the bond was issued.

If you refer to the fund accumulated from taxation in the sinking fund, a diversion of the sinking fund might result in there not being sufficient money in such fund to retire bonds at maturity. And while we do not care to express an opinion on the legality of a loan from the sinking fund to the school board, we do not think it is a good practice, and feel that such transaction should be discouraged.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SMALL LOAN COMPANIES—IN RE QUALIFICATIONS

November 9, 1931.

Dear Sir:

This refers to your favor of November 7th, relative to small loan companies.

It is my opinion that as long as all of the business is transacted at the office of the company in counties of more than forty thousand inhabitants and with proper charter qualifications, that then it is immaterial whether the applicant comes from any county or not.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CONSTRUCTION IN RE STOCKS, BONDS, NOTES, TRANSFERS—GOVERNMENTAL AGENCIES NOT SUBJECT TO

November 10, 1931.

Dear Sir:

This will acknowledge receipt of your favor under date of October 28th, in which you request a reply to yours under date of October 3rd, and I will endeavor to answer your several questions propounded in the same.

Replying to your first question, which reads as follows:

(1) Where certain securities consisting of stocks, bonds and notes belonging to an individual are transferred by that individual to this institution as trustee under a voluntary trust agreement, under the terms of which the individual owner of the securities is to receive the income derived from said securities during the remainder of her life. Does such a transfer require stamps on the actual value of securities transferred, there being no actual consideration paid for said transfer, and would the retention by the owner of the securities of the power of revocation of the agreement, or the complete elimination of such power of revocation or amendment, affect the taxability of these securities and/or the transfer of the same under the Act referred to?

Permit me to say:

Under the provisions of paragraph 3 of Schedule A, it appears that the Stamp Tax Act would apply to the above stated transaction, and that the transfer of the securities mentioned would come within the terms of the Act, and that the securities should bear the documentary stamps.

Your second question reads as follows:

(2) Does the Act referred to require the placing of stamps on each successive sale or transfer of bonds and notes; or does the affixing of such stamps to the original bond or note at the time of its issuance, or at the time of its first transfer, if issued prior to the date of the Act, eliminate the necessity of further stamp tax, or must new stamps be placed on the bond or note each time it is sold or transferred? This question refers not only to the usual bonds which are sold on the market, but to individual and corporate notes of indebtedness, and notes secured by mortgages on real estate.

In reply permit me to say that under the terms of the Act stamps should be placed upon the bonds or notes described in your question, each and every time the bond or note is sold or transferred. And this applies not only to the usual bonds which are sold on the market, but to individual and corporate notes of indebtedness, and notes secured by mortgages on real estate.

Your third question reads as follows:

(3) Is it necessary to place stamps upon bonds or notes, in connection with the sale or transfer thereof, representing the obligations

(a) of the United States Government, such as Liberty bonds, treasury notes, etc.;

(b) bonds issued by counties within the State of Florida;

(c) bonds issued by cities within the State of Florida;

(d) bonds issued by any of the several states or political subdivisions of the United States.

In reply to the above, permit me to say that bonds, such as Liberty bonds, treasury notes, etc., of the United States Government, are of course exempt from the documentary stamp tax.

Bonds issued by counties of the State of Florida, or any special tax district, or bonds issued by any other state, county or special tax district, or by any city or town of any other State, all being obligations of governmental agencies, it is my opinion that it was not the intent of the Legislature that the documentary stamp tax Act should apply in such cases, and they are therefore not subject to the tax.

Your last question reads as follows:

(4) Is it necessary to place upon bonds or similar obligations sold on the New York Stock Exchange or elsewhere outside of the State of Florida in cases where such bonds or notes were not issued originally within the State of Florida?

In reply, permit me to say that the documentary stamp tax is applicable to the class of bonds or similar obligations described in the above question, when such bond or similar obligations are transferred, sold, assigned, or delivered to a person, firm, or corporation in the State of Florida.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

AMUSEMENT PARKS—LICENSE MAY BE GRANTED BEFORE
OPENED AND EQUIPPED

November 10, 1931.

My Dear Sir:

This refers to your favor of the 9th instant, and I agree with you in your conclusions, except that I do not believe a man could be refused a license to operate a permanent amusement park until after a park had been opened and equipped, because this carried to the ultimate conclusion would prevent anyone from establishing a permanent amusement park. The Tax Collectors, I think as a rule, know when the applications are made in good faith and it is a question of getting them to enforce the law accordingly.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—RETAIN TITLE CONTRACT
OF FURNITURE COMPANY SUBJECT TO

November 10, 1931.

Gentlemen:

This refers to your favor of November 9th. I note you have advised your client who is in the furniture business that his retain title contract embodies the promise to pay money at stated periods is in effect a promissory note and, therefore, requires the documentary stamp. In this opinion I concur.

With reference to your second question, that is, assuming the contracts require stamps, which I am clearly of the opinion they do, and the contract calls for the payment of more than \$100.00, and less than \$200.00, whether a 10 cent or a 20 cent stamp should be affixed. It is my opinion that a 10 cent stamp should be affixed upon until it reaches \$200.00. When it reaches \$200.00, then an additional 10 cent stamp should be affixed. It is my opinion further that all notes and promises to pay require a stamp and that any note of less than \$200.00 requires a 10 cent stamp. By a careful reading of the entire Act, I am clearly of the opinion that the Legislature intended that all promises to pay money should be stamped.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

7

DENTAL HYGIENIST—MUST BE GRADUATE FROM ACCREDITED SCHOOL

November 12, 1931.

Dear Doctor:

This is with reference to the telephone conversation which you had with me this morning.

As I understand the facts you have in mind a party who has for fifteen years been working in a dental office under the supervision of a regular licensed dentist; that the party has been doing such work as is now termed "Dental Hygienist"; that this party is not a graduate of a school conducting a course of dental hygiene; that the party is probably well equipped to pass any sort of examination on dental hygiene; yet the question arises whether or not Chapter 14708, Laws of 1931, would prevent this party from taking this examination.

I am of the opinion that under this law no one is entitled to take the examination to practice as a Dental Hygienist without first having graduated at an accredited school conducting a course of dental hygiene. Section 30 of the above named law seems to be clear upon this point. This Section seems to give the Board of Examiners the power to adopt such rules and regulations as would seem proper, but the law specifically provides that "No person shall be entitled to such certificate unless such person shall be more than eighteen years of age, of good moral character, and a graduate of an accredited school conducting a course for dental hygienist."

I find no exception in the law, and, therefore, it occurs to me that the party you have in mind will be forced to complete a course in some accredited school conducting a course for dental hygienist before being eligible for taking the examination to practice as a dental hygienist.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—WHEN COMMERCIAL PAPER
SIGNED AND PAYABLE OUTSIDE OF STATE
SUBJECT TO

November 12, 1931.

Dear Sir:

Replying to your favor of the 5th instant relative to the Documentary Stamp Tax Law, permit me to say:

Under the 3rd paragraph of Schedule A of said act, we find the following language:

"On promissory notes, non-negotiable notes, written obligations to pay money, assignment of salaries, wages, or other compensation, made, executed, delivered, sold, transferred, or assigned in the State of Florida, and for each renewal of the same * * *."

In view of the language above quoted, it appears that the delivery of commercial paper such as promissory notes, trade acceptances, etc., signed, issued, and payable outside of the State of Florida, if delivered to a person, firm or corporation in this State, is subject to the tax.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

*STOCK DROVER—INTERPRETATION

November 13, 1931.

Dear Sir:

Replying to your favor of the 12th instant, in which you ask to be advised the amount of license tax necessary for an auctioneer, permit me to suggest that you see the County Tax Collector, who will advise as to the proper amount to be paid.

In reply to your question regarding the legal interpretation of the word, "drover," permit me to say the definition taken from the Code of the State of Idaho and quoted in "Words and Phrases," appears to be as correct as any other interpretation, and reads as follows:

"Every person whether owner or employee who drives or brings or assists in driving or bringing any cattle, horses, mules, asses, sheep, or hogs, through or into the State is deemed a 'stock-drover'."

Yours very truly,

CARY D. LANDIS,
Attorney General.

BOUNDARY BETWEEN FLORIDA AND ALABAMA IN RE PERDIDO BAY

November 13, 1931.

Dear Doctor:

I am in receipt of your letter of the 10th instant, making inquiry as to the dividing line between Florida and Alabama as regards Perdido Bay, and particularly with reference to the jurisdiction of the Sheriff's force and other officers of the respective States relative thereto.

The following are the boundaries of the State of Florida as prescribed by the Constitution of 1885:

"The boundaries of the State of Florida shall be as follows. Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama, and the thirty-first degree of north latitude; thence due east to the Chattahoochee river; thence down the mid-

dle of said river to its confluence with the Flint river; thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic Ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to, and including the Tortugas Islands; thence northeastwardly to a point three leagues from the land to a point west of the mouth of the Perdido river; thence to the place of beginning."

The following are the boundaries of the State of Alabama, as prescribed by the State Constitution of Alabama of 1901:

"The boundaries of this State are established and declared to be as follows, that is to say: Beginning at the point where the thirty-first degree of north latitude crosses the Perdido river; thence east to the western boundary line of the State of Georgia; thence along said line to the southern boundary line of the State of Tennessee; thence west, along the southern boundary line of the State of Tennessee, crossing the Tennessee river, and on to the second intersection of said river by said line; thence up said river to the mouth of Big Bear Creek; thence by a direct line to the northwest corner of Washington County in this State, as originally formed; thence southwardly along the line of the State of Mississippi, to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; thence up the said river to the beginning; provided that the limits and jurisdiction of this State shall extend to and include any other land and territory hereafter acquired by contract or agreement with other States, or otherwise, although such land and territory are not included within the boundaries hereinbefore designated."

The following is the boundary line between Florida and Alabama from the Chattahoochee river to the Perdido river, as shown by Section 2, Compiled General Laws of Florida, 1927, originally Chapter 165, Acts of 1848, adopted upon agreement of commissioners of the two states:

"The line commencing on the Chattahoochee river near a place known as 'Irwin's Mill,' and running west to the Perdido, marked throughout by blazes on the trees, and also by mounds of earth thrown upon the line, at distances of one mile, more or less, from each other, and commonly known as the 'Mound line' or 'Ellicott's line,' and by these names distinguished from another line above, running irregularly at different distances not exceeding one and a half miles from the 'Mound line' and marked by blazes only, and known as the 'Upper line,' or 'Coffee's line,' is the boundary line between the States of Florida and Alabama."

It does not appear that there ever has been a commission of the two States to locate the exact boundary between them with reference to Per-

dido Bay. The Constitution of Alabama is indefinite, as you will observe. Likewise the Constitution of Florida is indefinite.

The general rule of boundaries with reference to lands separated by navigable bodies of water is that each side owns to the middle of the main channel of navigable rivers and with reference to bays I think the Courts would probably hold that each side owns to the middle of the main channel of the bay for the reason that each side is entitled to equal rights of navigation.

Should the middle of the main channel be held as the boundary line, of course, the jurisdiction of the officers of the respective states would also extend to such line.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LEGAL NOTICES—PUBLICATION OF

November 13, 1931.

Dear Sir:

Replying to your favor of the 9th instant, permit me to say that Chapter 14831, Acts of 1931, provides that all legal notices must be published in a newspaper, which at the time of publication shall have been continuously published at least once each week, and shall have been entered as second class mail matter at a post office in the county where published for a period of one year next preceding the first insertion of such publication, or in a newspaper which is a direct successor of a newspaper which has been published, or in a newspaper being published at the time of the passage of this act.

The act contains the following proviso:

"Provided, however, that nothing herein contained shall apply where in any county of the State of Florida, there shall be no newspaper in existence, which shall have been published for the length of time prescribed by this act."

In view of the provisions of the statute above quoted, it appears that if there were not a newspaper being published in your county, which had been published according to the provisions of the Act above quoted, that any newspaper being published in the county at that time, or any newspaper which has entered the field since the act became effective, would be eligible.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—SUPPLEMENTAL DEED OF TRUST SUBJECT TO

November 13, 1931.

Gentlemen:

I am in receipt of your letter of the 10th instant, enclosing copy of Supplemental Deed of Trust from the Trustees of the First Baptist Church of Tampa to Mercantile-Commercial Bank and Trust Company of St. Louis, Missouri.

You state that the Clerk of the Circuit Court has refused to record the original of the above mentioned instrument unless you attach documentary stamps to the amount of \$160.00, and you request my advice in the premises under the provisions of Chapter 15,787, Laws of Florida, Acts of 1931.

I have read your letter carefully and also the above mentioned statute and it appears to me that the Supplemental Deed of Trust is a renewal of a "written obligation to pay money." as mentioned in the statute, and is, therefore, subject to the documentary stamp tax.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PUBLIC RECORDS—PRIVATE CITIZEN HAS RIGHT TO INSPECT

November 13, 1931.

Dear Sir:

Replying to your favor of the 9th instant, in which you ask to be advised regarding the right of a private citizen to inspect the tax mortgage and deed books of record in Dade County, permit me to say:

It is the right of any person to inspect or make a search of any public record in a public office at any time such office is open to the public. Of course, this does not mean that any particular individual would have the right to monopolize any particular public record, which might be frequently referred to by a large number of persons, or the use of which might be required by the officer and his clerks having charge of the same.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—INSTRUMENTS EXECUTED BY FEDERAL LAND BANK EXEMPT

November 17, 1931.

Dear Sir:

This will acknowledge receipt of your favor of the 12th instant, with which you enclose copy of letter from Hon. Harry D. Reid, General Counsel for the Federal Land Bank of Columbia, S. C., dated November 10th, in

which Mr. Reid advises that the Florida Documentary Stamp Tax Act conflicts with Section 26 of the Federal Farm Loan Act, Title 12, Chapter 7, paragraph 931 U. S. C., which reads as follows:

"Every Federal Land Bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of Section 761 and Section 781 of this chapter. First mortgages executed to Federal Land Banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this chapter, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal and local taxation."

We note that Mr. Reid on behalf of the bank requests that you do not pay or in any way make it liable for the tax provided for in the Florida Documentary Stamp Tax Act, on any instrument executed by the bank, or on any first mortgage or note thereby secured, executed to the bank, or on any master's deed executed to the bank under the foreclosure of a first mortgage held by it, and that before paying the tax on any instrument in connection with the transaction in which the Federal Land Bank is interested, that you communicate with the bank.

In view of the chapter and section of the Federal Farm Loan Act quoted, it appears that it is necessary for this office to rule that the instruments named by Mr. Reid shall be held to be exempt from the provisions of the Florida Documentary Stamp Tax Law, and that the stamps shall not be required on the instruments and documents exempted under the provisions of the Federal Farm Loan Act.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

BEAUTY PARLOR—IF CERTAIN EMPLOYEES EXEMPT FROM
COMPLYING WITH BARBER'S ACT

November 18, 1931.

Dear Sir:

This will reply to your favor of the 12th instant, in which you ask to be advised whether or not Section 4-D of Chapter 14650, Acts of 1931, exempts from its provisions a person employed in a beauty parlor for the cutting of hair or some other branch of beauty culture.

Under the provisions of the section and chapter above mentioned, persons practising beauty culture are exempt; however, we think a person em-

ployed in a beauty parlor, whose duties are confined to cutting hair and other functions ordinarily performed by a barber in a barber shop, should be required to comply with the provisions of the same.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PARTY AFFILIATION—METHOD OF CHANGING

November 20, 1931.

Dear Sir:

Replying to yours of the 17th instant, permit me to say:

Section 365, Compiled General Laws, provides the manner in which a person may change his party affiliation. Section 383, Compiled General Laws, requires the candidate to take, sign and subscribe to an oath or affirmation in writing, in which he shall state the particular party of which he is a member; that he did not vote for any nominee of any other party, national, state or county, at the next preceding general election, etc.

In view of the law above quoted, it is my opinion that if your client did not vote at the last general election and he goes before the Supervisor of Registration and subscribes to the oath in writing required by the statute, and has his name entered on the registration books as a Democrat, he would be eligible as a candidate in the Democratic primary to be held next June.

Yours very truly

CARY D. LANDIS,
Attorney General.

SCHOOL BUILDING—DISPOSITION OF INSURANCE MONEY

November 20, 1931.

Dear Sir:

Replying to your favor of the 18th instant, in which you state that the Laurel Hill School District was bonded several years ago for the purpose of building and equipping a school building at Laurel Hill in the sum of \$15,000, which building, furniture and fixtures were recently destroyed by fire but were estimated to bring \$18,000 insurance for the loss, and in which you ask whether or not any of such money received from the insurance company can be transferred to the tax district for paying outstanding obligations other than on contract for a new building or fixtures for same, permit me to say:

It is my opinion that the money received from the insurance company should be used for the same purpose that the bonds were issued, namely, to pay for a school building and equipment.

Replying to your question as to whether the county can legally employ men by the day to salvage all the old brick from the burned building, permit me to say this is probably a matter within the discretion of the members of the school board.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DISABLED WAR VETERANS—NOT EXEMPT FROM PAYMENT OF
HUNTING LICENSE

November 25, 1931.

Dear Sir:

Replying to your favor of the 23rd instant relative to the exemptions allowed to disabled war veterans, permit me to say the Florida statute provides that any disabled war veteran or one unable to perform manual labor may be granted an occupational license free of charge.

A hunting license is not occupational, but is a privilege tax and does not come within the terms of the exemption allowable to a war veteran.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DISABLED WAR VETERANS—NOT EXEMPT FROM PAYMENT
TAX REQUIRED BARBER'S LAW

November 25, 1931.

Dear Sir:

Replying to your favor of the 19th instant, relative to Section 17 of the Florida "Barber Law," permit me to say the examination and registration fee provided therein is not an occupational license, but is a fee provided for the support of the Board of Examiners.

Therefore, war veterans are not entitled to exemption from the payment of such tax.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CRIMINAL COURTS—JURISDICTION CRIMINAL CASES NOT
CAPITAL

November 25, 1931.

Dear Sir:

Replying to your favor of the 21st instant, permit to say:

Section 25 of Article V of the Constitution provides that the criminal courts of record shall have jurisdiction of all criminal cases not capital, which shall arise in counties having a criminal court of record.

In counties where there are criminal courts of record, justices of the peace have no trial jurisdiction in criminal cases, but may act as committing magistrates to inquire into criminal charges with reference to the detention for trial or bail or discharge of a person accused of crime. See *Jackson vs. State*, 33 Fla., 620, 15 So. 250.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SMALL LOANS—LAW GOVERNING

November 28, 1931.

Dear Sir:

Replying to your favor of the 25th instant, in which you request me to refer you to the statute governing the making of small loans up to \$300, permit me to say that Chapter 10177, Acts of 1925, or Sections 3990 to 4017, Compiled General Laws 1927, inclusive, cover the subject.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—RECEIVERS NATIONAL BANKS NOT REQUIRED TO PAY FROM ASSETS OF TRUSTS IN HAND

November 30, 1931.

Dear Sir:

This refers to your favor of November 25th, relative to Mr. Harry Fagan, Receiver of the First National Bank of Avon Park, Florida, wherein you state that he has paid a fifteen dollar documentary stamp tax from his trust to the State of Florida, incident to the sale of certain assets.

I concur in your opinion that under the Constitution and Federal laws, as we find them, Receivers of National Banks need not pay the State Documentary Stamp Tax out of and from the assets of such trusts in the hands of Receivers of National Banks.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

RACE TRACKS—ONE AND SAME NAME MUST BE USED

November 30, 1931.

Dear Sir:

This refers to your favor of November 25th.

It is my opinion that the license to operate a race track must be in the same name as the name given in the permit. I do not believe you could operate under another or different name, regardless of whether or not it was in good faith or otherwise.

In other words, the name used in making the application, the name in the permit, the name in the license and the name under which the track operates, in my opinion, must be one and the same name.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

AUTOMOBILE LICENSE TAGS—ONLY ACTIVE U. S. OFFICIALS
ENTITLED TO FREE

December 1, 1931.

Dear Sir:

This refers to your favor of November 30th.

It is my opinion that you, as a retired officer, not on active duty, are not entitled to an automobile tag free of cost. In other words, it is my opinion, that only those officials who are actively engaged in duty are entitled to automobile tags free of the State license charged.

Very respectfully,

CARY D. LANDIS,
Attorney General.

STATE HIGHWAYS—ENFORCEMENT OF LAWS FOR PROTECTION

December 2, 1931.

My Dear Sir:

This refers to your favor of November 30th, and in reply I would state that I did have in mind the section, to-wit: Revised General Statutes 83, Compiled General Laws, Section 104, but I am inclined to think that there might be some doubtful question as to our making use of this authority, however, if we are unable to properly enforce the State Highway Laws, it may be that we should resort to this a little later.

Mr. Bentley and others who are interested in this matter feel that we have worked out a system by which these laws may be properly enforced. If we cannot get proper action on the part of the deputy sheriffs already appointed, I think there would be no question but that upon the suggestion of the Governor, deputy sheriffs at the strategic points can be appointed for this special service with limitation of authority within the county. I really believe we will be able to enforce the law but if we are not, we may have to resort to the section of law you refer to, or it may be that there may be some other laws we may appeal to in the final analysis.

Very respectfully,

CARY D. LANDIS,
Attorney General.

INTANGIBLE TAX—CONSTRUCTION OF STATUTE IN RE
BANKS

Decemebr 2, 1931.

Gentlemen:

Replying to your favor of the 21st ult., in which you state that it is your understanding that under the provisions of Chapter 15789, Acts of 1931, bank shares will be assessed on the basis of two mills on the dollar beginning in 1932, and that you are advised that no personal tax against banks in addition thereto will be enforced, permit me to say:

Chapter 15789, Acts of 1931, has defined "intangible personal property" as being all property which is not in itself intrinsically valuable, but which derives its chief value from that which it represents.

Section 3 of Chapter 15789, Acts of 1931, expressly designates for the purposes of taxation as "intangible personal property," all of that class of property mentioned in Classes A and B of said Section 3, therefore, it is my opinion that all property expressly mentioned in Section 3 under Classes A and B as being "intangible personal property," and subject to taxation as such, must be taxed as "intangible personal property," and could not be taxed as tangible personal property. Property cannot for the purposes of taxation be classed as both tangible and intangible.

We do not construe the provisions of Chapter 15789, Acts of 1931, to include as "intangible personal property" a bank's furniture and fixtures or other tangible personal property, and therefore all tangible personal property of a bank, if subject to taxation by the State, should be assessed as heretofore, that is, as personal property.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INTANGIBLE TAX—BANK DEPOSITS WITHIN CLASS C

December 2, 1931.

Dear Sir:

This refers to your favor of November 21st, in which you raise the question as to whether or not Chapter 15789, Laws of Florida, known as the Intangible Personal Property Tax Act, covers deposits of money in a bank.

It is my opinion that this Act unquestionably does cover deposits in banks and falls within Class C as intangible personal property, under Section 3 of this act.

Very respectfully,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—WRITTEN ASSIGNMENT
OF WAGES SUBJECT TO

December 2, 1931.

Dear Sir:

This refers to your favor of the 28th instant, with reference to the Documentary Stamp Tax.

The instrument which you present appears to be an obligation to pay money and embodies a chattel mortgage and assignment of wages. This instrument, in my opinion, under the law, requires documentary stamps, the amount being based upon the amount of the obligation. Inasmuch as it is all one instrument, it is my opinion, that it being one transaction, it requires but one stamping.

Very respectfully,

CARY D. LANDIS,
Attorney General.EXCISE TAX—WHEN TWO ELECTRIC COMPANIES LIABLE
FOR ONLY ONE TAX

December 3, 1931.

My Dear Sir:

This refers to your favor of November 20th, relative to excise tax on electric companies. The facts out of which grow the problem, with references to which you ask my opinion, as I understand them are, as follows:

The West Florida Power Company owns a hydro plant located on the Ocklocknee River, southwest of Tallahassee. The Florida Power Corporation owns all of the corporate stock of the West Florida Power Company, with the exception of qualifying shares for directors who are the nominees of the Florida Power Corporation. Both are Florida Corporations. The hydro plant is constructed under a Federal license, and is subject to regulation by the Federal Power Commission. The Florida Power Corporation under a contract with the West Florida Power Company takes the total output of electricity generated by the West Florida Power Company at the hydro electric plant for commercial purposes. The Florida Power Corporation then sells this current to its various customers. The Florida Power Corporation furnished all of the funds for the construction of the plant, and at all times heretofore and now pays all operating expenses. Those operating the hydro plant are on the pay roll of the Florida Power Corporation, and the Florida Power Corporation advances all funds for all salaries and all other expenses in connection with the operation of the plant, including the payment of taxes and these are then as a matter of bookkeeping charged to the West Florida Power Company. The West Florida Power Company actually receives no cash and has no bank account, as all transactions between the company are reflected only by bookkeeping entries. As a matter of bookkeeping mechanics, the report of the Florida Power

Corporation made annually reflects the earnings, if any, or losses, accruing to the operation of the West Florida Power Company. Whatever dividends that may be declared or profits made are a part of the earnings of the Florida Power Corporation.

Out of these facts grows the question as to whether or not both corporations should make a report and pay a tax under Chapter 15658. It is my opinion, that on the facts as above stated, it would be permissible for the Florida Power Corporation to file a consolidated return covering its business, which includes the power generated by the West Florida Power Company, and that but one tax would be payable, that is, the tax due from the Florida Power Corporation. Under the facts as above stated, it is my opinion, that the operation of the West Florida Power Company is simply a means of operation of one business, and I do not believe that it is the intent of the Legislature under Chapter 15658 to exact a double tax under such circumstances as where the profits or earnings belong solely and wholly to one company and the matter of operation is through subsidiary corporations, purely as a convenient means of handling the business. On the other hand, if any of the stock of the West Florida Power Company were held by any one other than the Florida Power Corporation so that it would be something other than a mere matter of bookkeeping mechanics, and that the profits or dividends would flow to others than the parent concern, then I think the act would apply and that both companies would fall within the requirements of Chapter 15658.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

PEDDLERS' LICENSE—WHEN REQUIRED TO PAY

December 3, 1931.

Gentlemen:

Replying to your favor of the 28th instant, in which you state that Mr. A has a store in a rural community of Lee County, that he takes a truck and at various points over Florida and Georgia brings down produce and vegetables and sells them from door to door in Lee and Collier counties, for which you wish to be advised if he is required to pay a peddler's license as provided in Section 1222, Compiled General Laws of 1927, permit me to say:

Unless Mr. A is exempt under the provisions of Chapter 15040, Acts of 1931, it is my opinion that he should be required to pay the peddler's license, provided for by Section 1222, Compiled General Laws, 1927.

Yours very truly,

CARY D. LANDIS,
Attorney General.

JUVENILE COURT—REQUIREMENTS FOR OFFICE OF JUDGE

December 4, 1931.

Dear Madam:

Replying to your favor of the 30th ultimo, in which you request me to advise you the requirements for the office of Judge of a Juvenile Court in the State of Florida, permit me to say:

Your letter being from Miami, I assume that you wish to know the qualifications required of a Judge of the Juvenile Court of Dade County. Chapter 8663, Special Acts of 1921, which created the Juvenile Court in and for Dade County, reads in Section 3 as follows:

"The said Judge shall have been a citizen of the United States and of the State of Florida for at least one year preceding his appointment, and shall not be less than 24 years of age, and shall be of high moral character and clean life and selected for his fitness to deal with delinquent and dependent children."

Under the laws of Florida, the county judge in counties where no Juvenile Court has been created by act of the Legislature, acts in the capacity of juvenile judge.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BAKERIES—MAIN AND BRANCH PLANTS LIABLE FOR
LICENSE TAX

December 4, 1931.

Dear Sir:

Replying to your favor of the 24th ultimo, relative to the payment of State and county taxes in this State, permit me to say we find that Section 12 of Chapter 6421, Acts of 1913, reads as follows:

"Bakeries, owners or managers of, other than steam, shall pay a license tax of \$3.00."

"Bakeries, steam, owners or managers of shall pay a license tax of \$10.00."

We note that you state that while your principal place of business is in Jacksonville, you operate four branch plants at other locations in the State. It is my opinion that the State and county license tax would apply to the branch plants as well as the Jacksonville plant.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MARRIAGE—WHO AUTHORIZED TO SOLEMNIZE RITES

December 4, 1931.

Dear Sir:

Replying to your favor of the 19th ultimo, which was referred to this office by Governor Carlton, permit me to say Section 5853 of the Compiled General Laws of Florida, provides that all legally ordained ministers of the gospel in communion with some church, and all judicial officers and notaries public of this State, are authorized to solemnize the rites of the matrimonial contract.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INTANGIBLE TAX—CERTAIN BONDS NOT SUBJECT TO

December 8, 1931.

Dear Sir:

This refers to your favor of December 4th, in which you make inquiry as to what my opinion is, as to whether or not county, municipal, road district, school district, drainage district and inlet district bonds are subject to taxation under the Intangible Tax Act of 1931.

It is my opinion that these bonds executed by State Agencies are entirely eliminated from the operation of the Intangible Tax Law by the exception contained in Class A. I am further of the opinion that it was the intention of the Legislature that these bonds are not to be taxable under any law. The Legislature evidently intended that these bonds of State Agencies should take the same place and stand on par with Federal bonds, which are exempted from taxation.

I would state that I expect to advise all of the County Tax Assessors to this effect at their State meeting to be held in Jacksonville on Friday of this week.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

INHERITANCE AND ESTATE TAX—CONSTRUCTION IN RE
ESTATES, CLOSED PRIOR TO DATE OF ACT

December 8, 1931.

Gentlemen:

Replying to your favor of the 3rd instant, in which you request my interpretation of Chapter 15746, Acts of 1931, and in which you state "it appears that the purpose of this chapter is to recover for the State of Florida a portion of the Federal inheritance taxes paid the Federal Government under the 1925 and 1926 Federal Inheritance Tax Acts," permit me to say:

It is my opinion that the act does apply to the estates of decedents which have been finally closed with the Treasury Department prior to the effective date of the act, as well as cases which are now pending before the Treasury Department.

Where a person died in 1926 and the representative finally settled the estate with the Federal Government in 1928, I am of the opinion that it is the duty of the representative of the estate under the 1931 Act to draw a draft upon the Treasury of the United States, together with claim for refund.

Where the Federal inheritance tax has not been definitely determined in the settlement of a particular estate, it is my opinion that as soon as the amount of the tax is determined, a draft should be drawn upon the Treasury of the United States, together with a claim for refund, by the representative, executor or administrator of the estate. This also applies to the case pending adjustment or settlement before the Treasury Department itself, or the United States Board of Tax Appeals.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FILLING STATIONS—WHEN FIVE DOLLARS LICENSE TAX REQUIRED

Dear Sir:

Replying to your favor of the 4th instant, permit me to say that a filling station engaged exclusively in the sale of gasoline, oil and grease, the same being products of petroleum, should pay a license tax of \$5.00.

However, if the filling station sells automobile tires, that would require another license.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—GOVERNMENTAL AGENCIES NOT SUBJECT TO

December 8, 1931.

Gentlemen:

Replying to your favor of the 4th instant, permit me to say this office holds that the Documentary Stamp Tax Act does not apply to the bonds, notes and other written evidence of indebtedness issued by counties and their subdivisions, or cities and towns, all of which are exempt by reason of being governmental agencies.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BARBER'S LAW—FEES, PUNISHMENT FOR VIOLATION

December 10, 1931.

Dear Sir:

Replying to your favor of recent date, permit me to say under the provisions of Section 12 and 17 of the "Barber Law," it appears that a person, even though not subject to examination by the board, is required to pay a qualification fee of \$10.00 and a registration fee of \$2.00.

The board has no power to close the shop because of a violation of the statute on the part of the owner thereof. The only penal provision of the statute is that a person convicted of a violation thereof shall be punished as if convicted for a misdemeanor. Before a person would be liable to prosecution, it would be necessary for some one to make a charge against him and have a warrant issued for his arrest and then it would be up to the prosecuting officer of the county to either prosecute or nolle pros whatever formal charge might be pending against the accused person.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WIDOW'S EXEMPTION—CONSTRUCTION OF LAW IN RE TAX ASSESSMENT

December 10, 1931.

Gentlemen:

Replying to your favor of the 5th instant, in which you ask to be advised whether the widow's exemption provided for by the Constitution and statutes of Florida is to be allowed upon the assessed value or upon the actual value of property, permit me to say:

The law contemplates that taxes shall be assessed on a full cash value, not a fifty per cent valuation. At the same time, the Supreme Court has held that uniformity and equality are the main things to be accomplished, and if everybody is assessed on a 50 per cent basis, it is perfectly proper.

Section 9 of Article IX of the Constitution provides that there shall be exempt from taxation property to the value of \$500.00 to every widow who has a family dependent on her for support. The property exemption in the amount of \$500.00 is supposed to be on the assessed valuation of same. But at the same time, if the assessed valuation of same is purposely and unlawfully made 50 per cent of the true value instead of 100 per cent of the true value, I think the Tax Assessor is not only justified in making a corresponding pro rata reduction in the exemption, but that it is his duty to do so.

Theoretically and legally, the \$500.00 exemption is intended to apply upon the assessed valuation based upon a true and lawful valuation at the full cash value of the property.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—SALES CONTRACT
SUBJECT TO

December 11, 1931.

Dear Sir:

Replying to your favor of the 19th instant, with which you enclose copy of your sales contract, and ask to be advised whether under the documentary stamp tax act the same should have the stamps affixed thereto, permit me to say:

The Act of the Legislature requires that documentary stamps be attached to all written obligations for the payment of money. Your contract being a written obligation for the payment of money, it comes within the terms of the act.

Yours very truly,

CARY D. LANDIS,
Attorney General.DOCUMENTARY STAMP TAX ACT—STOCK TRANSFERS,
METHOD OF ATTACHING STAMPS

December 11, 1931.

Dear Sir:

Replying to your favor of the 9th instant, permit me to say:

We find under the 3rd paragraph of Schedule A of Chapter 15787, known as the Documentary Stamp Tax Act, the following provisions:

"That in case of sale where evidence of transfer is shown only by the books of the corporation, the stamps shall be placed upon such books of the corporation, and where the change of ownership is by transfer of the certificate, the stamps shall be placed upon the certificates."

In view of the wording of the statute, it seems that it is necessary to hold that where evidence of the transfer of stock is shown by certificates, the stamps shall be attached to the certificates instead of the books of the corporation.

I note that you express a doubt regarding whether or not the Legislature intended that the stamps should be attached to the certificates. Your doubt may be well founded, but the language of the statute does not appear to permit any other construction than that stated above.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—MASTER'S DEEDS SUBJECT
TO—GOVERNMENTAL AGENCIES EXEMPT

December 16, 1931.

Dear Sir:

Replying to your favor of the 11th instant, in which you make inquiry regarding the Documentary Stamp Tax Act, permit me to say:

I have heretofore held that the Documentary Stamp Tax Act does apply to "Master's deeds issued as a result of foreclosure proceedings in chancery."

I have also heretofore held and now hold that all notes, bonds, mortgages, deeds, and other evidences of indebtedness, issued, sold, transferred, assigned, or delivered by any State, county, or subdivision thereof, or municipality, all being governmental agencies, are exempt from the provisions of the Florida Documentary Stamp Tax Act. This also applies, of course, to such documents and instruments issued by the Federal Government and its agencies.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY FUNDS—WHEN BANKS REQUIRED TO PAY INTEREST

December 16, 1931.

Dear Sir:

Replying to your favor of the 7th instant, permit me to say it is my opinion that where the aggregate daily balance of the several funds of the county is more than \$2,000, the bank is required to pay interest on the amount over and above \$2,000.

Yours very truly,

CARY D. LANDIS,
Attorney General.CHAMPERTY AND MAINTENANCE—COMMON LAW IN FORCE
IN FLORIDA

December 16, 1931.

Dear Sir:

Replying to yours of the 8th instant, permit me to say the common law in regard to champerty and maintenance is in force in Florida.

See *Farrington vs. Greer*, 113 So. 722, where the Supreme Court of Florida said "modern common law as to champertous conveyances is not so rigorous or inflexible nor always attended by same results as early common law."

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—MORTGAGE INTEREST
COUPONS NOT SUBJECT TO

December 19, 1931.

Dear Sir:

Replying to your favor of the 15th instant, permit me to say it is my opinion that documentary stamps are not required on mortgage interest coupons, where the stamps are placed on the principal note. Written agreements for extension of mortgages require the documentary stamps whether a new note is given or not, as this would be a written agreement for the payment of money.

Yours very truly,

CARY D. LANDIS,
Attorney General.CHAIN STORE ACT—RESTAURANTS, CAFES, ETC., NOT
SUBJECT TOSTATE TREASURY—MONEY PAID CAN BE REFUNDED ONLY BY
LEGISLATIVE ACT

December 19, 1931.

My Dear Sir:

Replying to your favor of the 16th instant, permit me to say that the Chain Store License Act of 1931 has no reference whatever to restaurants, cafes or public eating salons.

Replying to your second question, I will say there is no way in which moneys once paid into the State Treasury may be refunded except by an Act of the Legislature.

Yours very truly,

CARY D. LANDIS,
Attorney General.DOCUMENTARY STAMP TAX ACT—TRAVELERS' CHEQUES
NOT SUBJECT TO

December 22, 1931.

Gentlemen:

Upon a consideration of the nature of travel cheques and the intent and purpose of the Florida Documentary Stamp Tax Act (Chapter 15787, Laws of Florida, Acts of 1931), I am of the opinion that travel cheques do not require the Documentary Stamp imposed on other instruments by said Act.

A travel cheque is issued by the bank and thereupon becomes an order for the payment of money by the bank when properly countersigned, much in the character of a cashier's check.

Yours very truly,

CARY D. LANDIS,
Attorney General.

EXCISE TAX—NOT AUTHORIZED TO MAKE DEDUCTION

December 22, 1931.

Dear Sir:

Replying to your favor of the 16th instant, in which you make inquiry regarding the provisions of Chapter 15,658, Laws of Florida, Acts of 1931, which is "an Act imposing a tax upon all corporations, firms and individuals receiving payment for electricity for light, heat or power, and for natural or manufactured gas for light, heat or power and for the use of telephones and for the sending of telegrams and telegraph messages or engaged in any such business; providing the method of collecting said tax and penalty for the failure to pay the same."

Section 1 of the chapter above mentioned provides that all corporations, firms and individuals, including municipalities receiving payment for electricity, etc., shall pay into the State Treasury the sum of \$1.50 upon each \$100.00 of gross receipts. In view of the language above quoted, it is my opinion your city would not be permitted to deduct the amount paid for electricity and pay a tax upon the difference between the amount paid and the amount received by the city, for the statute refers to a tax upon the gross amount received and not upon the net amount.

Yours very truly,

CARY D. LANDIS,
Attorney General.DOCUMENTARY STAMP TAX ACT—WHEN STOCK BOOK OF
CORPORATION SHOULD BEAR STAMPS

December 23, 1931.

Dear Sir:

Replying to your favor of the 18th instant, permit me to say the transfer of stock in a Florida corporation would necessarily have to be shown on the books of the corporation, and therefore, under the provisions of Chapter 15787 the transfer of legal title to shares of stock in a Florida corporation is subject to the Documentary Stamp Tax Act, and the stamps representing the tax imposed should be attached to the stock books of said corporation.

Yours very truly,

CARY D. LANDIS,
Attorney General.INFANTS—THOUGH DISABILITIES REMOVED NOT ELIGIBLE
TO VOTE

December 24, 1931.

Dear Sir:

I am in receipt of your letter of the 21st inst., making inquiry as to whether or not an infant, after having the disabilities of infancy removed by order of Court, may exercise the right to vote in the Primary and General Elections.

Section 5022 of the Compiled General Laws of 1927, with reference to removal of disability of minors, provides for a decree removing the disabilities of non-age and authorizing such minor to assume the management and control of all his estate, to contract and be contracted with, to sue and be sued, and do and perform any and all acts, matters and things that he could do if he were 21 years of age.

The above statute is very broad in its terms but under the Constitution of the State cannot be construed to grant the right of suffrage to those under the age of 21 years. Section 1 of Article VI of the State Constitution, with reference to suffrage and eligibility, provides for persons of the age of 21 years and upwards under certain conditions to be qualified electors. The effect of the language is to exclude from the privilege of voting in State elections all those who are not 21 years of age. Again in Section 3 of Article VI of the State Constitution it is provided that an elector, at the time of registration shall take and subscribe to an oath in which he swears or affirms that he is 21 years of age.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—STOCK SOLD THROUGH
NEW YORK EXCHANGE SUBJECT TO

December 28, 1931.

Dear Sir:

Replying to your favor of the 16th instant, relative to the question of whether the Documentary Stamp Tax Act of Florida is applicable where a person holding shares of stock in Florida instructs his broker in Florida to sell the shares on the New York Stock Exchange and the broker executes the order through his New York office, permit me to say:

The third paragraph under schedule A of Chapter 15787, Acts of 1931, provides that on all sales, agreements to sell, or memoranda of sales or deliveries of, transfers of legal title to shares or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, etc., the documentary stamp tax shall apply.

In view of the language of the statute above quoted, it is my opinion that if, upon receipt of the order by the broker in Florida to sell a client's stock on the New York Stock Exchange, a memorandum of the agreement to sell or a memorandum of sales or deliveries is made by the broker in Florida, the tax would apply to such memorandum.

If A in Florida holds the stock certificates in his possession, and to make such certificates negotiable it is necessary for him to sign in blank

or attach what you term a stock power executed in blank, and deliver to his broker in Florida, this in effect would amount to an assignment of said certificates and the stamps should be attached thereto.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PEDDLER'S LICENSE—EXEMPTION SHOULD BE GRANTED TO
CRIPPLES IN EACH COUNTY WHERE GOODS SOLD

December 30, 1931.

Dear Sir:

Replying to yours of the 15th instant, permit me to say: Chapter 15040, Acts of 1931, reads as follows:

"All confirmed cripples or invalids physically incapable of manual labor, who have been residents of the State of Florida for a period of at least one year, and all Confederate Veterans or veterans of the World War or Spanish-American War, falling within any exemption otherwise provided by law, and widows who are dependent upon their own exertions shall be allowed to peddle without paying a license, using their own capital only; provided, such exemption shall be allowed only upon the certificate of the county or other reputable physician of the disability herein named; provided, this exemption shall not apply to the sale of spiritous, vinous or malt liquors, lightning rods and cigarettes."

Permit me to say that under the terms of the statute above quoted, it does not appear that a person who may be entitled to the exemption would be confined to one county. But it does appear that it might be necessary to have the exemption granted in each county in which you expect to sell your goods.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MOTOR TRUCK LICENSE—CERTIFIED CARRIER ENTITLED TO
OBTAIN FOR SIX MONTHS

December 31, 1931.

My Dear Sir:

This refers to your favor of the 28th instant, relative to the issuance of license to Mr. J. G. Coats covering motor truck lines for hire.

If Mr. Coats is a certificated carrier he is entitled to obtain a six months license. Mr. Coats, of course, must submit proof that he is a certificated operator. The Motor Vehicle Department generally requires from all persons desiring a six months license a statement that they expect

to either store the car or equipment and not operate longer than the six months covered by the license. This is done, and I think very properly so, to cover situations where people obtain six months license and then violate the law by running on into the next six months without procuring a further tag, however, so far as Mr. Coats is concerned, if he will present the proper evidence to Mr. Jackson that he is a certified carrier, it will Mr. Jackson's duty to issue him the six months license. I have had this up with Mr. Cates of the Motor Vehicle Department and he advises me that he will this morning wire Mr. Jackson directions in line with the above statement.

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

INTANGIBLE TAX LAW—RETURN

January 1, 1932.

Gentlemen:

This refers to your letter of December 30th, 1931, relative to intangible personal property return to be made by your company. The problem presented by you is whether or not you file your return in Duval County where your principal office is located, at Jacksonville, Florida, or whether you make the return in the various counties.

It is my opinion that under Section 9 of our Intangible Tax Law, it is clearly your duty to file your intangible personal property return in Duval County, the place where the principal office of your corporation is located. This return, of course, is to cover all intangible personal property of your corporation in the State of Florida. No return need be made in counties other than the county where the principal office is located.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SCHOOL BUSES—WHEN EXEMPT FROM TAXATION

January 8, 1932.

Gentlemen:

Replying to your favor of the 4th instant, permit me to say Section 14 of Chapter 15625 appears to exempt motor trucks, trailers and semi-trailers operated by the State of Florida, or any county or municipality of the State of Florida, including public school authorities owning vehicles used in transporting school children to and from schools in the State.

We note that you state that Orange County owns six automobiles which are used for the purpose of transporting school children from the schools

to their homes or from the schools to places of treatment when they are sick. We construe Section 14 of the Act to mean that the vehicle, even though owned by the School Board, must, to be entitled to an X-tag, be used exclusively in the transportation of children to and from public schools, and the use of the cars for any other purpose would remove them from the exemption and render them subject to the regular tag.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TRADING STAMPS—LICENSE TAX REQUIRED ON EACH
PLACE OF BUSINESS

January 21, 1932.

Gentlemen:

Replying to yours of the 6th instant, permit me to say there is no statute in this State prohibiting merchants giving premiums, but there is a statute (Section 1199, Compiled General Laws of 1927) which imposes a license tax of \$250.00 on each place of business where trading stamps are used.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TRUST ESTATE—STATUS UNDER INTANGIBLE TAX LAW

January 12, 1932.

Dear Sir:

Replying to your favor of the 7th instant, in which you ask to be advised regarding the taxable status under the intangible personal property taxation law of 1931 of a trust estate, where the trustee is a foreign trust company and the trust securities are wholly without the State of Florida, but where the entire net income of the estate is payable during his lifetime to a resident of this State, permit me to say:

It is my opinion that the securities constituting the trust fund should be returned for taxation in this State by the resident of Florida for whose benefit the foreign trust company is holding the same.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DRAINAGE DISTRICT—APPLICATION OF CHAPTER 14713,
ACTS 1931

January 12, 1932.

Dear Sir:

Replying to yours of the 8th instant, in which you make inquiry regarding Chapter 14713, Acts of 1931, permit me to say:

The Act referred to applies to any drainage district for which there is imposed by law a specific annual acreage tax which is required to be paid into a separate fund and used exclusively for debt service purposes.

The Act does not apply to a drainage district located wholly within one county or to a drainage district involved in any litigation at the present time in the Supreme Court of Florida.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CONSTRUCTION
IN RE STOCKS

January 13, 1932.

Dear Sir:

At the request of Senator Alfred H. Wagg, I am herewith stating to you my opinion with reference to requirements of Chapter 15787, which is known as the Documentary Stamp Tax Act, passed at the Session of the Legislature of the State of Florida in 1931.

It is my opinion that if there is a memoranda made by the broker of the sale of stock, or if there is a memoranda made by the broker of the delivery of stock, and such memoranda is made or delivered in Florida, then such memoranda must bear the proper documentary stamp. If no such memoranda of either sale or delivery is made or delivered in Florida, then, of course, no documentary stamp is required.

If an owner of stock, who is in Florida, or his agent, who is in Florida, gives an order for sale of stock in another State, but no memoranda of the same is made and the stock is sold in another State and delivered in another State to the owner or the owner's agent, then the transaction requires no documentary stamp, for the reason that it is a completed transaction without the State of Florida.

Of course, if such stock having been sold in another State has to be transferred on the books of the corporation in Florida because of its being a Florida Corporation, then the documentary stamp is required on such transfer; also any power of attorney, either on the back of the certificate, or if any form separate and apart from the certificate is executed or delivered in Florida, such power of attorney must bear the proper documentary stamp.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CORPORATION CHARTER TAX—CONSTRUCTION OF LAW

January 14, 1932.

Dear Sir:

Replying to yours of the 5th instant, relative to Chapter 14677, Acts of 1931, permit me to say:

Section 10 of Article I of the Constitution of the United States forbids the States enacting or enforcing a statute impairing the obligations of contracts. Under this clause of the Constitution, it has been settled that the charter of a quasi public or a private corporation, whether civil or eleemosynary, is an executed contract between the government and the corporation, and that the Legislature cannot repeal, impair or alter it against the consent or without the default of the corporation judicially ascertained and declared.

Section 5 of Chapter 14677, Acts of 1931, provides that any corporation failing to comply with the provisions of the Act for six months shall forfeit its corporate and charter privileges, and shall not be permitted to maintain any action in any Court in this State until such reports are filed, and all fees due are paid.

It is my opinion that under the provisions of Section 5 of the Act, failure on the part of a corporation to file the reports and pay all fees due would not ipso facto cause a forfeiture of its corporate and charter privileges, and that before a complete forfeiture could be accomplished the default on the part of the corporation would have to be ascertained and declared by a court of competent jurisdiction, whereupon the corporate and charter privileges of the defaulting corporation could be adjudged by the Court to be forfeited, and that thereafter the corporation would not be privileged to acquire property or to sell, assign or mortgage its own property. But it is my opinion that until such default had been judicially ascertained and declared, and the corporate and charter privileges adjudged to be forfeited, a corporation could buy, sell, assign or mortgage property, and that such transactions would be as valid as if the corporation had complied with all the provisions of the legislative Act.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CANDIDATE—WHEN NAME CANNOT BE PRINTED ON GENERAL
ELECTION BALLOT

January 16, 1932.

Dear Sir:

Replying to your favor of the 12th instant, permit me to say:

Except as to candidates for municipal office it is my opinion that Senate Bill No. 76, Acts of 1931, approved June 15, 1931, which is now Chapter 14657, Acts of 1931, makes it impossible for a candidate's name to

be placed on the general election ballot for a State or county office, unless such candidate has been nominated in a primary or by the executive committee of a political party.

In other words, it is my opinion that under said Chapter it is impossible for a person to get his or her name on the general election ballot for a State or county office, as an independent candidate by petition.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INTANGIBLE TAX LAW—CONSTRUCTION

January 16, 1932.

Dear Sir:

Replying to your favor of the 6th instant, in which you make inquiry regarding the application of the Intangible Tax Law, permit me to say that all loans and discounts, whether secured or unsecured, should be returned by the bank or other party to whom the debt is owing.

"All bonds except bonds of the several municipalities and counties of the State of Florida and also such bonds or governmental bonds as may be exempt from taxation under the Constitution or laws of the United States or the State of Florida" should be returned to the tax assessor as intangible personal property.

Only such cash on hand and due from banks as is the property of the bank should be returned for assessment against the bank. Individual depositors should make their own returns of bank deposits.

Notes held by a bank or individual, the same being the property of the bank or individual, should be returned to the assessor as intangible personal property.

The statute divides intangible personal property into three classes—A, B and C. If you will read the statute which is Chapter 15789, Acts of 1931, you will see under which classification a particular kind of property belongs.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INTANGIBLE TAX LAW—BUILDING AND LOAN ASSOCIATIONS REQUIRED TO MAKE RETURNS

January 16, 1932.

Dear Sir:

Replying to your favor of the 8th instant, in which you ask to be advised whether or not it is my opinion that building and loan associations incorporated under the laws of Florida are required to make returns under Chapter 15789, Acts of 1931, relating to taxation of intangible personal property, permit me to say:

Section 8 of said Chapter makes it the duty of every person, firm or corporation owning or having the control, management or custody of intangible personal property to make a return thereof. Therefore, the Section includes building and loan associations incorporated under the laws of Florida.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY JUDGE—FEES

January 16, 1932.

Dear Sir:

Replying to your favor of the 9th instant, relative to the statutes controlling the fees to be charged by the County Judge of your county, permit me to say we have heretofore definitely advised the County Judge of Putnam County the sections of the law governing the fees to be charged both in criminal and probate matters.

We have given due consideration to the argument contained in your letter, but we are unable to concede that the fact that the county judge is ex officio Clerk of the County Judge's Court entitles the County Judge to the fees prescribed in the Act of 1927 for clerks of the various courts of record.

The statute authorizes the County Judge to employ a clerk and pay such clerk a salary, and we must continue to hold that the fees of the County Judge are governed by Section 3084, Revised General Statutes of 1920, in criminal matters, and Section 5200, Compiled General Laws, in probate matters.

Yours very truly,

CARY D. LANDIS,
Attorney General.

POOL TABLES—WHEN SUBJECT TO TAX

January 18, 1932.

Dear Sir:

Replying to your favor of the 15th instant, in which you ask to be advised whether or not a social club owning and operating pool tables would be subject to State and County tax, permit me to say I think this would depend upon whether or not a club was operating a pool table for profit and permitting any one willing to pay to use it. Where a pool table is located in an Elks Club, for instance, for use of the members only and not operated as a business I do not think a State and County license should be required.

Replying to your second question in which you ask to be advised whether or not a Spanish War Veteran would be exempt from payment of

tax on pool tables, permit me to say the statute provides that a War Veteran disabled to the extent that he is unable to perform manual labor may be granted one occupational license tax free of charge, and this applies to the operation of a business carried on mainly through the personal efforts of such Veteran. It is my opinion, therefore, if the Veteran is entitled to the exemption that the exemption would apply to the operation of a billiard parlor or pool room and that such license as might be necessary for the operation of one business should be granted to such Veteran.

Chapter 13,876, Acts of 1929, providing for Veterans' exemption does not prevent a municipality adopting a regulatory ordinance imposing a high license tax on pool rooms, where such license is imposed not as a matter of raising revenue but as a means of restraining the operation of pool rooms, and this office has heretofore held, and now holds, that where a municipality adopts such an ordinance that the city or town is not bound as a matter of law to allow even a disabled Veteran to operate a pool room license free under the Chapter above mentioned.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ICE CREAM—CHAPTER 14762 DOES NOT APPLY

January 22, 1932.

Dear Sir:

I am in receipt of your letter of the 19th instant, making inquiry as to whether, in my opinion, Chapter 14,762, Laws of Florida, Acts of 1931, applies to the manufacture of ice cream.

The above Act is one to define and regulate the sale of milk and milk products in the State of Florida, etc. Section 1 in separate paragraphs defines milk and milk products and the word "ice cream" is not contained in either of said paragraphs. Neither do said paragraphs in defining milk and milk products mention any product similar to ice cream, as defined in Chapter 14,523, Laws of Florida, Acts of 1929.

Since we have on the statute books particular statutes with reference to ice cream and since Chapter 14,762, Acts of 1931, fails to mention ice cream, or any product similar thereto, it is my opinion that Chapter 14,762, Acts of 1931, does not apply to ice cream, or to the manufacture of ice cream.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MOTOR VEHICLES—IN RE TAXATION BY MUNICIPALITIES

January 23, 1932.

Dear Sir:

Replying to your favor of the 19th instant, in which you request my opinion regarding the authority of municipalities to levy and collect an occupational license tax from operators of motor vehicles for hire, which have been certificated by the Railroad Commission, permit me to say:

Under the provisions of Section 16 of Chapter 14764, Acts of 1931, it appears that if an auto transportation company is operated under a permit of the Railroad Commission and is paying a mileage tax, municipalities have no authority to levy a tax of any kind upon such company, except ad valorem taxes levied upon their property other than motor vehicles.

Yours very truly,

CARY D. LANDIS,
Attorney General.

UTILITIES ACT—CONSTRUCTION

January 25, 1932.

Gentlemen:

Replying to your favor of the 20th instant, in which you request my advice upon the validity and constitutionality of Chapter 15658, Acts of 1931, "insofar as the same applies to municipalities owning public utilities," permit me to say:

Section 1 of said Act provides that all corporations, firms and individuals including municipalities, receiving payment for electricity for light, heat or power and for natural or manufactured gas for light, heat or power, and for use of telephones, and for the sending of telegrams and telegraph messages, or all such corporations, firms and individuals engaged in any such business on or before the first day of January, A. D. 1932, and annually thereafter, shall pay into the State Treasury of the State of Florida the sum of \$1.50 upon each \$100 of gross receipts.

I have heretofore held and now hold that municipalities owning public utilities and receiving payment for electricity, heat or power, or for the use of telephones, are not exempt from the provisions of this Act.

I have carefully read the Title and each section of this Act, and it is my opinion that the Act is constitutional and in every respect valid, and would be upheld by the Supreme Court.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MUNICIPALITIES—IN RE TAX EXEMPTION

January 27, 1932.

Dear Sir:

Replying to your favor of the 22nd instant, in which you ask to be advised whether or not a municipality is required to allow an exemption from taxation of \$500.00 on household goods and personal effects, permit me to say Section 11 of Article IX of the Constitution of the State of Florida, reads as follows:

"No tax upon inheritances, or upon the income of residents or citizens of this State shall be levied by the State of Florida, or under its authority, and there shall be exempt from taxation to the head of the family residing in this State household goods and personal effects to the value of \$500.00."

The organic provision, quoted above, was adopted at the General Election of 1924. We are under the impression that some of the municipalities have and some have not allowed the exemption.

Replying to your second question, permit me to say municipalities are prohibited from levying a tax on automobiles. This is based on Constitutional amendment adopted at the General Election November, 1930.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MOTOR TRUCKS—WHEN NOT LIABLE FOR TAG TAX

January 27, 1932.

My Dear Sir:

This refers to your favor of January 25th, in which you make inquiry as to whether or not certain trucks which the Southern Kraft Corporation of Panama City, Florida, own are liable for truck license. These trucks are operated, as I understand it, solely on the mill site and are used for the purpose of carrying loads from one part of the plant to another and never go upon any public street or highway.

The ruling of the Motor Vehicle Commissioner is that under these circumstances these trucks are not subject to the tag tax, and in this opinion I concur. I wish to emphasize the fact, however, that should any of these trucks be found at any time upon the public highway, the county highway, the public streets or any highway used by the public, that then these trucks would be liable for the tag tax and whatever penalty that may have accumulated under the law.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—METHOD FOR DETERMINING
AMOUNT

January 30, 1932.

Dear Sir:

Replying to your favor of the 27th instant, relative to the amount of documentary stamps to be placed upon leases, where the consideration is the amount received from the sale of fruit produced on the grove, which amount is divided equally between the lessor and lessee, permit me to say the stamp tax should be based upon the actual value based upon past experience.

Yours very truly,

CARY D. LANDIS,
Attorney General.PREACHERS OF THE GOSPEL—EXEMPT FROM PAYMENT
OF TOLLS

February 1, 1932.

Dear Sir:

Your letter under date of January 18th, addressed to Governor Carlton, has been referred to me for reply.

Permit me to say under Section 2752, Compiled General Laws of Florida, clergymen and preachers of the Gospel are exempted from the payment of toll at any of the bridges and ferries of this State.

In the case of ferries and toll bridges operated by public or private authorities, ministers, clergymen and preachers desiring to obtain the privileges of passing over such bridges and ferries without paying toll as provided in the statute, should make application to the authorities in charge of the bridge or ferry for a written pass giving them such privileges.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MORTGAGE—IN RE FORECLOSURE

February 1, 1932.

Dear Sir:

Replying to your favor of the 27th instant, permit me to say:

Before the holder of a mortgage can foreclose the same, notice would have to be served upon the mortgagor or his agent or attorney. Your furniture and household goods would not be subject to the mortgage debt on the house, nor could the holder of the mortgage collect the rent on the house prior to foreclosure, unless there was a written agreement between the owner and the holder of the mortgage stipulating that he could do so.

The fact that your home was purchased with government compensation money would have no bearing on the right of the mortgage-holder to foreclose. However, if there should be a foreclosure without notice to you, either by mail, or, if your address was unknown to the mortgage-holder, by advertisement in a newspaper for the statutory time, such foreclosure would be invalid.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CONSTRUCTION IN RE
FINAL DECREE ASSIGNMENT

February 2, 1932.

Dear Sir:

This refers to your letter of January 30, wherein you requested my opinion as to the application of the Documentary Stamp Tax Act, to-wit: Chapter 15787,, Laws of Florida, to the following facts as stated by you:

"South Okeechobee Farms Company, a corporation, held final decree of foreclosure against Southern Sugar Company, a corporation, which decree was obtained on March 30, 1931, for the sum of Eighty-six Thousand, Nine Hundred and One (\$86,901.00) Dollars, principal, plus about Six Thousand (\$6,000.00) Dollars accrued interest. On November 9, 1931, South Okeechobee Farms Company sold and assigned its final decree to Glades Purchasing Company, a corporation, the consideration for the assignment was Seventy-six Thousand One Hundred and Seven Dollars and Eighty-eight Cents (\$76,107.88)."

Chapter 15787 provides that the stamp tax act shall apply to all assignments and transfers of written obligations to pay money. The Act also provides for the payment of a stamp tax on any assignment or transfer of interest in real estate. If the obligation to pay money is embodied in the mortgage itself, and there is no separate obligation to pay money, the stamps must be attached to the mortgage and also to the assignment, if an assignment is made.

It is my opinion that the facts above stated show that the final decree, which was assigned, is in effect an obligation to pay money, the same being reduced to a definite amount due and being adjudicated as a definite obligation to pay money secured by a lien or interest in real estate.

Considering the different sections of the documentary stamp tax act, I am clearly of the opinion that the assignment of this final decree is subject to the documentary stamp tax act, and that documentary stamps should be attached, based on the actual consideration for the assignment, to-wit: as above stated on the basis of \$76,107.88.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—STOCK CERTIFICATES
WHEN SOLD OR PLEDGED AS COLLATERAL LIABLE

February 2, 1932.

Dear Sir:

Replying to your favor of the 27th ultimo, in which you ask to be advised whether or not it is necessary to affix documentary stamps to stock certificates, where the certificates are sold or pledged as collateral security, permit me to say it is my opinion that it is necessary under the Act to affix documentary stamps where the stock certificates are sold or pledged as collateral security.

Replying to your second question, in which you ask to be advised whether or not it is necessary to affix additional stamps if the certificate is then pledged or repledged on the renewal note, permit me to say it is my opinion that the renewal note should carry stamps, but if there is no new delivery, transfer or assignment of the collateral, I do not think the collateral should be required to have new stamps.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INTANGIBLE TAX—APPLICATION TO BANKS

February 3, 1932.

Gentlemen:

This refers to your letter of January 22nd, and I beg to advise that the conclusion reached in my letter of September 16th as follows:

"It is my opinion, and with this I am satisfied the Comptroller agrees, that the two mill intangible tax is paid in lieu of all tax upon banks, *except the ad valorem* tax, as to tangible *personal property* and the *real estate*. In other words, the tangible personal property and the real estate of banks are liable for the *ad valorem* tax, but the two mill intangible tax is in lieu of all other tax,"

is the acceptable interpretation of the law at this time; however, this does not mean that this intangible tax is in lieu of the occupational license tax which you mention. The occupational license tax referred to in Section 1095 of the Compiled General Laws of 1927, is an entirely different tax and this tax is applicable and must be paid in addition to the above tax mentioned.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

UNIVERSITY OF FLORIDA—IN RE COMPENSATION OF DEAN
OF COLLEGE OF ENGINEERING

February 4, 1932.

Dear Sir:

I am in receipt of your letter of the 15th ultimo, written in behalf of the Board of Control with reference to the General Appropriation Act, Chapter 15719, Laws of Florida, Acts of 1931.

You refer to the text of the Act, page 1257, with reference to the College of Engineering. And you also refer to the text of the Act shown at page 1230 reading as follows:

"The salaries as fixed for the Institutions of Higher Learning and State Plant Board in this bill shall be the maximum amount to be expended annually for such positions, but the amounts herein designated may be decreased or eliminated *and new positions or items substituted if deemed* advisable by the Board of Control or the State plant Board, provided that in no event shall funds appropriated for equipment and operating expenses be transferred for the payment of salaries; and provided further that in no event shall the sums herein appropriated be exceeded in the aggregate."

You state that the University of Florida has been without a Dean of the Department of Engineering for several months, and that it is possible to secure the services of a capable man for that purpose provided he can be paid a salary of \$6,000 per annum.

Under the provisions of the above quoted statute providing for substitutions, if deemed advisable by the Board of Control, keeping in mind the appropriation on page 1257 of the sum of only \$500 for the Dean of the College of Engineering, you suggest the following as a basis for the complete salary of \$6,000 proposed to be offered in order to secure the services of the man desired for the position of Dean of the College of Engineering:

Dean of the College of Engineering.....	\$ 500.00
Professor of Engineering	4400.00
University Engineer	1100.00
	\$6000.00

In my opinion it is contrary to public policy for an employee of the State, either in a clerical or professional capacity, to hold several positions at the same time. However, I cannot believe that it is contemplated that one holding the responsible position of Dean of the College of Engineering of the University of Florida should receive the salary of only \$500 per annum stipulated in the above mentioned Appropriation Act. Such nominal salary would indicate that it was contemplated for some professor in the College, in addition to his work as a professor, to perform the duties of Dean and receive as compensation therefor the said sum of \$500 additional.

Furthermore, the part of the statute quoted from page 1230 above, appears to give legislative authority for employing and paying the desired person for the position named, upon such a basis as you outlined, provided that the sums appropriated in the aggregate shall not be exceeded.

With kindest regards, I am,

Yours very truly,

CARY D. LANDIS,
Attorney General.

NEGROES—NOT ALLOWED TO VOTE IN WHITE DEMOCRATIC
PRIMARY

February 5, 1932.

Dear Mr. Blackburn:

Your letter of the 2nd instant, addressed to Hon. R. A. Gray, has been referred to this office for reply. I note that you ask the following question:

“Should a negro register for the June primary? Will that give him the right to participate in the Democratic primary of June 7th and June 28th?”

In reply, permit me to say the question of whether or not a negro registering as a Democrat would be permitted to vote in the primaries of June 7th and June 28th will depend entirely upon the call of the executive committee of the party holding the primary. The primary law applies to all political parties, but Section 320, Revised General Statutes of Florida, authorizes the State executive committee to declare terms upon which electors may be deemed to be members of the party, and therefore, the executive committee of any political party may confine its memberships to the white race if it wishes to do so, and in such cases only white electors could participate in the primary of such party.

Every elector who registers under the law of the State of Florida should declare his party affiliation, and the same shall be entered upon the registration book as he declares it. The fact that a negro registers as a Democrat will give him no right to cast a ballot in a Democratic primary called to be held by the white Democratic voters of the State.

This is in accord with the opinion rendered by former Attorney General Rivers Buford, who has since become a member of the Florida Supreme Court.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INTANGIBLE TAX—IN RE MORTGAGES HELD FOR FOREIGN
INSURANCE COMPANIES

February 5, 1932.

Dear Sir:

Replying to your inquiry of the 16th ultimo, which reads as follows:

"Can you kindly advise if Florida authorities intend to apply intangible personal property tax Act 1931 so as to tax mortgages held for foreign insurance companies on Florida property or to tax policy loans of Florida residents."

permit me to say:

Mortgages on Florida property held by insurance companies domiciled in a State other than the State of Florida on January 1, 1932, would not be assessable in the State of Florida as intangible personal property.

A loan made by an insurance company to a person permanently domiciled in the State of Florida on January 1, 1932, the proceeds of which were in the form of cash on other intangible personal property on that date, should be returned for taxation by such person, together with his or her other cash or other intangible personal property. The fact that the money came from a loan on an insurance policy would not make it exempt from taxation.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INTANGIBLE TAX—ASSETS OF CLOSED BANKS NOT
SUBJECT TO

February 5, 1932.

Dear Sir:

Replying to your favor of the 23rd ultimo, relative to taxing notes, bonds and other property which are assets of closed banks in the hands of a receiver or liquidator, permit me to say Hon. Ernest Amos, State Comptroller, has ruled, and I concur in his ruling, that intangible personal property held by banks that are in the hands of receivers or liquidators are not subject to taxation under the intangible tax law, because the property is held for the benefit of the creditors of the bank, and no part thereof will become the property of the stockholders again, unless and until the full amount of the indebtedness of the bank is liquidated and settled. Therefore, there is no person, firm or corporation in whose name the intangible personal property could be assessed.

Yours very truly,

CARY D. LANDIS.
Attorney General.

DOCUMENTARY STAMP TAX ACT—CONSTRUCTION

February 9, 1932.

Dear Sir:

Replying to your favor of the 5th instant, permit me to say that paragraph 5 under schedule A of Chapter 15787, Acts of 1931, requires documentary stamps on all instruments or writings whereby any interest in lands, tenements or other realty is granted, assigned, transferred or otherwise conveyed to or vested in the purchaser or purchasers, or any other person or persons, by his, her, or its direction.

Therefore, the beneficial interest in real estate, the assignment of which is to be made from one person to another, would under Section 5 require documentary stamps, and the stamps should be based upon the consideration shown by the instrument transferring or assigning the interest. Where no actual consideration is shown, the value of the interest in the property transferred or assigned, should be the basis for the tax.

You, of course, understand that there are many transactions arising from time to time, in which it is difficult to ascertain definitely just how and to what extent the documentary stamp tax Act applies. In such cases, attorneys should work the matter out to the best of their ability, and advise their clients accordingly.

We know of no provision of law which would invalidate an instrument or impair its legal standing, if the documentary stamps are omitted. The penal section of the statute applies only in case of a willful failure to attach the stamps.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE EXECUTIVE COMMITTEE—SELECTION OF PARTY OFFICERS, DELEGATES AND COMMITTEEMEN

February 13, 1932.

Dear Sir:

Replying to your favor of the 6th instant, relative to selection of party officers, delegates and committeemen, permit me to say Section 389, Compiled General Laws, authorizes the State executive committee of any political party to by resolution declare for the nomination of candidates for other than elective offices, and also for the selection of national committeemen, delegates to national political conventions, and for president and vice-president of the United States.

Chapter 13761, Acts of 1929, provides for the election of members of the State Congressional and county executive committees every two years by plurality vote in the first primary. Chapter 13761, Acts of 1929, is silent upon the nomination or election of delegates to party conventions, also upon

nomination or election of national committeemen. Therefore, Section 389, Compiled General Laws, is the statute prescribing the manner in which delegates and national committeemen may be selected.

In other words, the State Executive Committee of a political party may by resolution declare for the nomination of delegates to conventions and national committeemen by vote in the primary, or in any other manner they may deem to be best.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FOREIGN CORPORATION—REQUIRED TO QUALIFY UNDER
FLORIDA LAW

February 17, 1932.

Dear Sir:

This will reply to your favor of the 10th instant, in which you state that an English Corporation is patentee of a device, which it arranges to permit a licensee to exploit in America generally and in the State of Florida, receiving certain royalties incident to the arrangement made by the licensee with the user, and reserving a provision whereby it has the right to collect its royalties directly from the user in Florida, as to which you wish to be advised whether or not in my opinion the collection of royalties by the British patentee corporation in Florida as part of the contract between the licensee and the Florida user is in contemplation of law the conducting of business in Florida by the British corporation, which would require it to qualify by procuring a permit to do such business.

Permit me to say it is my opinion that under such statement of facts as outlined above, the British corporation is doing business in Florida and should qualify by procuring a permit so to do.

Yours very truly,

CARY D. LANDIS,
Attorney General.

NEWSPAPERS—ENTITLED TO ONE HUNDRED DOLLARS FOR
PUBLISHING LAWS

February 17, 1932.

Dear Sir:

This refers to your letter of February 9th.

It is my opinion that under Sections 2262, 2263, 2264 and 2265, the newspapers publishing the Acts of the Legislature are entitled to one hundred dollars, and that they are not entitled to one hundred dollars for the publication of the general laws enacted at each session. I note that you contend

that you are entitled to three hundred dollars, but it is my opinion that you are in error as to this, and that you are entitled to only one hundred dollars.

Section 2263 of the Compiled General Laws, provides that this payment shall be made from any money in the State Treasury not otherwise appropriated. It is my understanding that there is no money at this time available in the State Treasury under this appropriation.

Very truly yours,

CARY D. LANDIS,
Attorney General.

TAX EXEMPTION—CERTAIN PROPERTY EXCLUDED

February 19, 1932.

Dear Sir:

Section 1 of Article IX of the Constitution of Florida requires the Legislature to provide for a uniform and equal rate of taxation, and to prescribe such regulations as shall secure a just valuation of all property both real and personal, except such property as shall be exempt by law for municipal, educational, literary, scientific, religious, or charitable purposes.

Section 893 of the Compiled General Laws of Florida, 1927, makes all real and personal property in the State of Florida and all personal property belonging to persons residing in this State, not thereby expressly exempt therefrom, subject to taxation.

Section 897, Compiled General Laws, exempts from taxation such property of educational institutions within this State as shall be actually occupied and used solely for educational purposes.

Under the rule of construction applied by the Supreme Court of Florida, all exemption laws should receive a strict construction, and no property should be declared within the exemption unless clearly within the terms of the exemption statute. In the case of *Rast vs. Hulvey*, 77 Fla. 74, 80 So. 750, the Supreme Court in construing this identical provision of the statute held that where property is used partly for educational purposes and in part as the home or living quarters of the owner, the same could not be held to be within the exemption provisions of the statute.

In that case it was said by the Court:

"It was not the intention of the Legislature to exempt from taxation property used (used) for educational purposes and other purposes jointly. The word 'solely' according to Webster's New International Dictionary, means 'without another; singly; alone; entirely; wholly.'"

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CERTIFICATES OF DE-
POSITS LIABLE

February 19, 1932.

Dear Sir:

Certificates of deposit issued by banks under the freezing Act permitting the reopening of State banks taken over by the Comptroller, are in my opinion under the law required to have documentary stamps attached thereto.

I appreciate, as suggested in your letter of the 16th instant, that these certificates do not represent any new indebtedness, but simply represent statutory and contractual freezing arrangement, but they are nevertheless written obligations to pay money, and I see no reasonable distinction in law whereby they might be exempt from the imposition of said tax.

Yours very truly,

CARY D. LANDIS,
Attorney General.DOCUMENTARY STAMP TAX ACT—GOVERNMENTAL BONDS
EXEMPT

February 24, 1932.

Gentlemen:

Replying to your favor of the 18th instant, in which you state that a national bank whom you represent is administrator of an estate, the principal assets of which are United States bonds, some of which are registered and some unregistered, which bank is now closing the estate and under order of the Court is transferring the bonds to a national bank as trustee for the distributees, as to which it wishes to determine whether or not it is necessary to place documentary stamps on the receipts of the distributees or on the bonds themselves, permit me to say:

It is my opinion that United States and all other governmental bonds, including the bonds of States, counties, subdivisions of counties, and municipalities, are exempt from the provisions of the documentary stamp tax Act, and this holding likewise applies to all other evidences of indebtedness issued by any of the governmental agencies mentioned above.

Yours very truly,

CARY D. LANDIS,
Attorney General.SCHOOL DISTRICTS—LIABLE FOR DEBTS WHEN
CONSOLIDATED

February 26, 1932.

Dear Sir:

Replying to your favor of the 15th instant, in which you advise that two special tax school districts of your county consolidated in August of 1931, and that assessments for the payment of bond interest and sinking fund was levied against both districts, as to which you wish to be advised whether or not the assessment is legal, permit me to say:

Section 751, Compiled General Laws, reads as follows:

"When two or more special tax school districts shall be consolidated, the entire consolidated district shall become liable for the payment of all bonds and other indebtedness of each of the districts so consolidated, and the entire area of the consolidated district shall be subject to be taxed for the payment thereof. The consolidated district shall become entitled to all of the funds and property of the districts consolidated."

I conclude, from the statements in your letter, that an assessment was levied in one district for the payment of bonds issued by another district prior to the date of the election. If so, that was perhaps unusual procedure. However, inasmuch as the two consolidated districts now become one and responsible for the payment of all bonds and other obligations, and entitled to all of the funds and property of the consolidated district, I can see no objection to the payment of the levy by property owners in the entire district.

Yours very truly,

CARY D. LANDIS,
Attorney General.

NAVAL STORES INSPECTOR—APPLICATION OF LAW

February 26, 1932.

Dear Sir:

Replying to your letter of February 20th, permit me to say Section 7032, Compiled General Laws, appears to contemplate three classes of Naval Stores Inspectors, to-wit:

- (a). Supervising Inspector.
- (b). One or more at large.
- (c). Local or Port Inspectors.

Section 7033 defines the powers and duties of supervising inspector, and Section 7034 appears to limit the powers and duties of "Naval Stores Inspectors" to the ports of which they are appointed. The same section provides that Naval Stores Inspectors at Large shall have power to make inspection at any point in the State.

In view of the Sections of the Statute above quoted, it is my opinion that if Mr. Register holds a commission as inspector of Naval Stores for Jacksonville and is being detailed to make inspections in the State at Large, that he should surrender his commission as port inspector and apply to the Governor for appointment as Naval Stores Inspector at Large.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

FUGITIVE—METHOD OF PROCEDURE FOR EXTRADITION FROM
FOREIGN COUNTRY

February 27, 1932.

Dear Sir:

Replying to yours of the 5th instant, in which you ask me to advise you how to proceed in preparing extradition papers for the return of an alleged fugitive from Nassau, British West Indies, permit me to say it is very difficult to perfect extradition papers which will gain approval by Washington authorities. However, I will endeavor to advise you to the best of my ability.

First, application setting forth the name of the alleged fugitive and crime of which he is charged, the section number of the statute under which he is charged, the name of the person proposed for appointment as agent to return the fugitive, and the name of the place at which the fugitive is under detention, should be made to the Governor of Florida in triplicate. Three copies of the indictment charging the crime, together with three copies of the statute upon which the indictment is based, are necessary. All officers whose names appear upon the papers should be authenticated by the Clerk of the Circuit Court of the county from which the indictment issues, and the three separate sets of papers should be forwarded to the Governor of Florida with the request that the Governor of Florida request the Secretary of State at Washington, D. C., to make a demand upon the foreign government for the return of the alleged fugitive.

The application, in addition to what has been said above, regarding its contents, should also contain the averment that the return of the alleged fugitive is not sought for the collection of a civil debt nor for any purpose other than to punish him for the crime charged in the indictment.

It should be remembered that all papers must be in triplicate, and duly authenticated by the Clerk of the Circuit Court under seal.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CLOSED BANKS—APPLICATION OF FREEZING ACT

February 27, 1932.

Gentlemen:

Replying to your letter of the 19th instant, I beg to advise that it has been and is my opinion that a party indebted to a bank cannot acquire the frozen deposit of a depositor in said bank and set-off the same against his indebtedness to the bank.

In the first place, they are not debts and demands mutually existing between the bank and its debtor. In the next place, and which affords a much stronger reason why it cannot be lawfully done, such action would defeat the purpose of the freezing statute.

The freezing statute was enacted not only for the benefit of the bank, but of the depositors as well. To use your illustration, if A may assign his frozen deposit to B, to whom he is indebted in a like amount, and B in turn set this off against his indebtedness to the bank, then it would be the equivalent of permitting A to withdraw his deposit in full and pay same to B in settlement of his account with B, who in turn would then pay the same over to the bank in payment of B's indebtedness to the bank.

It is readily seen that this defeats the very purpose for which the act was passed, in that it was intended that the bank should collect its debts and marshal its assets for the purpose of meeting its obligations, not to one or a few depositors but to all alike as far as its assets would go.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INTANGIBLE TAX LAW—CONSTRUCTION

March 1, 1932.

Dear Sir:

Replying to your favor of the 25th instant, relative to Chapter 15789, Acts of 1931, Laws of Florida, relating to intangible personal property tax, in which you ask several questions, permit me to give you my interpretation of the same, as follows:

Your first question reads:

(a) Are bonds secured by mortgages or other liens on property located in another state, taxable under the act, and if so, under which class should they be listed in the tax return?

In reply, permit me to say it is my opinion that a note, bond, or other obligation for the payment of money, which is secured by a mortgage or other lien upon real or personal property wholly outside of Florida, does not come within the provisions of the act. If a part of the security is within the State of Florida, the note, bond, or obligation is taxable to the extent of the value of the security in the State in proportion to the whole of the security.

Your second question reads:

(b) Is it incumbent upon the owner of intangible to make return under oath, and if so, how is he to ascertain the cash value, when the particular item has no fixed market value?

In reply thereto, permit me to say there is no provision in the statute requiring return to be verified by oath. However, a false return, even though not verified by oath, might be construed to be a willful failure or refusal to comply with the act, and in case of prosecution might invoke the penalty provided therein. Where intangible personal property has no

fixed market value, it is up to the owner to estimate the value thereof, based upon past experience.

Of course, if the Tax Assessor does not agree with the valuation placed thereon by the owner, the statute authorizes him to increase the valuation.

Replying to your third question, which reads as follows:

(c) If the property owner should make return and not subscribe to the prescribed oath set forth on the blank return, would he be subject to criminal prosecution under Section 21 of the act?

Permit me to say, as stated in answer to Question (b), that the statute does not require the return to be verified by oath. Therefore, a criminal prosecution could not be predicated upon the failure to make a sworn return, but might be predicated upon a willful failure to make an unsworn or a false return.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CITY OR TOWN—APPLICATION OF LAW IN RE ANNEXATION OF TERRITORY

TAX EXEMPTION—APPLICATION OF LAW

March 1, 1932.

Dear Sir:

I am in receipt of your letter, in which you make two inquiries—first, with reference to annexation of territory to an incorporated city or town, and second, with reference to tax exemptions including poll taxes.

In answer to your first inquiry, I beg to call your attention to Section 3951, Compiled General Laws of Florida, 1927. This statute provides that if a district proposed to be annexed to the city or town has less than 10 registered voters, the council of said city may by ordinance declare its intention to annex such territory at the expiration of 30 days from the approval of said ordinance, which shall be published once a week for four consecutive weeks, and if before the expiration of the 30 days any 10 registered voters of said city or town, or any two owners of real estate in the district proposed to be annexed, shall object to such annexation, they may apply by petition to the Circuit Court, setting forth the grounds of their objection; and a hearing shall be had, and if the Court sustains the objection the said tract shall not be annexed; otherwise, the application shall be dismissed and the said tract shall be annexed to the city or town.

The same Section provides that if a tract proposed to be annexed contains ten or more registered voters, the city ordinance proposing to annex the tract of land, shall be submitted to a separate vote of the registered voters of the city or town, and of said tract of land, and the said tract of land shall not be annexed unless such annexation is approved by a majority of

two-thirds of the registered voters actually voting at such election in said district and in said city or town.

Answering your second inquiry, with reference to tax exemptions, I beg to refer you to Section 910, Compiled General Laws of 1927, which provides for an exemption from poll taxes to such as have lost a limb, or who have become disabled in the Army or Navy service.

Further answering your second question, I refer you to Section 1269, Compiled General Laws, which provides for an exemption for business or occupational license to any person who served as an officer or enlisted man in the United States Army, Navy, or Marine Corps, during the World War, between April 6, 1917, and November 11, 1918, or the Spanish-American War, and who was honorably discharged from the service of the United States, and who at the time of his application for license shall be disabled from performing manual labor.

Further answering your second inquiry, I beg to refer you to Section 20 of Chapter 14491, Laws of Florida, Acts of 1929, as amended by Chapter 15040, Laws of Florida, Acts of 1931, which provides that confirmed cripples or invalids, residents of Florida for one year, or all Confederate Veterans of the Civil War, or veterans of the World War, or Spanish-American War, falling within any exemption otherwise provided by law, and widows who are dependent upon their own exertions, shall be allowed to peddle without paying a license, using their own capital only.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX COLLECTORS—DUTIES IN RE OCCUPATIONAL LICENSE TAXES

March 1, 1932.

Dear Doctor:

I am in receipt of your letter of the 27th ultimo, making inquiry with reference to the duty of county Tax Collectors to see that all occupation licenses are paid.

In reply, I beg to refer you to Section 1272, Compiled General Laws of 1927, reading as follows:

"The payment of all license taxes shall be enforced by the seizure and sale of the property by the Tax Collector, or in case of State license taxes payable either to the State Treasurer or Comptroller, by the State Treasurer or Comptroller, as the case may be, and it is hereby made the duty of the Tax Collector and county judge to report to the Comptroller and State's Attorney any violation of this chapter."

I refer you also to Chapter 14491, Laws of Florida, Acts of 1929. Section 2 of said chapter contains the following language:

"And the Tax Collector of each county in this State is hereby authorized and directed to collect such county license tax," etc. Section 23 of the same act reads as follows:

"The payment of all license taxes shall be enforced by the seizure and sale of the property by the Tax Collector, or in case of State license taxes payable either to the State Treasurer or Comptroller, by the State Treasurer or Comptroller, as the case may be, and it is hereby made the duty of the Tax Collector and county judge to report to the Comptroller and State's Attorney any violation of this chapter."

Yours very truly,

CARY D. LANDIS,
Attorney General.

CHAIN STORES—TRANSFER OF LICENSES

March 1, 1932.

Dear Sir:

This is in reference to your inquiry as to the application of the license tax law covering Chain Stores under circumstances as I understand them as follows:

You represent the owner of a series of Chain Stores. Your client has paid the license tax as required by the law covering these stores. He has determined that he desires to move the location of one or more of these stores and have his license transferred from the present location to the new location.

I have carefully considered the Chain Store Tax Act, as well as the other laws pertaining to the transfer of licenses of this character and, it is my opinion, that your client is entitled to have a transfer made of his license from the location where he may now be located to the new location. In other words, it is my opinion that this license is on the doing of the business or the conduct of the store and not upon any particular location. It is true, however, that in the application for the license it is necessary for your client to set forth the location, etc. This is done as a matter of furnishing knowledge to the taxing authorities so that they may know at all times where the business is located on which or for which the license is granted. I am sending a copy of this letter to the State Comptroller, and I do not believe that your client will have any further trouble in having his license transferred.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CHAIN STORES—TRANSFER OF LICENSES

March 1, 1932.

Dear Sir:

This supplements my letter to you of March 1st, 1932, relative to the transfer of license for certain of your client's chain of stores.

This letter of March 1st applies only to the transfer of a license from one place in a county to another place in the same county. Of course it does not apply where one store moves from one county into another county, insofar as the county license is concerned. The facts as you stated them to me applied only to one county, but I am advising you now so that you may not conclude that you can move one store from one county to another county without obtaining a new county license.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

INTANGIBLE TAX—LOANS MADE BY FEDERAL FARM BOARD
EXEMPT

March 1, 1932.

Dear Sir:

This refers to your comprehensive letter of the 29th ultimo, raising the question as to whether or not the loans made by the Federal Farm Board through the Florida Citrus Exchange and its constituent associations are taxable under the Intangible Tax Act.

It is my opinion that these are loans made by the Federal Farm Board, to-wit: An agency of the Federal Government, and, therefore, are not taxable under this act.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CRIMINAL LAW—PROCEDURE

March 2, 1932.

Gentlemen:

Replying to your favor of the 26th instant, in which you ask to be advised relative to the criminal laws of this State, permit me to say in counties having a Criminal Court of Record, felonies less than capital may be tried upon information filed by the County Solicitor, and in such counties all indictments for felonies found by the Grand Jury are certified to the Criminal Court of Record for prosecution.

The Statute of Limitation in criminal cases less than capital is two years. The Supreme Court of Florida in *Warace vs. State*, 27 Fla. 362, 8

So. 748; *Weinert vs. State*, 35 Fla. 229, 17 So. 570, held that the evidence must show in the trial of felonies not capital, that the crime was committed within two years from the presentment of the indictment or information.

An indictment must be found or an information filed in cases less than capital within two years after the commission of the crime, or the offense charged therein will be barred.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SCHOOL MONEY—DISTRIBUTION

March 2, 1932.

Dear Sir:

This refers to your letter of February 29.

In reply to your inquiry, I would state that the distribution of school money under Chapter 14892, Acts of 1931, is based on a minimum of eight-month school term, for both the high and elementary schools. If a school does not run eight months, its allotment will be cut down accordingly. In other words, as you suggest, if a school runs for only six months, the distribution would be cut down one-fourth of the amount that the allotment would be for the school to run for the full term of eight months.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RACE TRACK LAW—PROCEDURE FOR OBTAINING PERMIT TO CONDUCT RACING

March 3, 1932.

Dear Sir:

Replying to your favor of the 23rd instant, with which you enclose letter from Mr. R. M. Williams, regarding what may be done under the "Race Track Law," permit me to say Section 5 of the act provides that on or before the first day of July of each and every year, any person, association, or corporation possessing the qualifications prescribed in this act, shall have the right to apply to the Racing Commission for a permit to conduct race meetings and racing under the act. And on or before the 15th day of August of each and every year, after receipt of any such application, the commission shall convene at the State Capitol to consider and grant permits applied for.

It is my opinion that the advisable thing for Mr. Williams to do is to file his application with the commission for a permit as provided by statute. After the application has been filed, if the commission should wish an opinion from this office on the question of whether or not the application is within the provisions of the statute such question could then be decided.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—AMOUNT NECESSARY

March 4, 1932.

Dear Sir:

Replying to your favor of the 25th instant, relative to the question of whether or not documentary stamps would be required upon a lease of real property for a term of 99 years, and in which you ask to be advised the amount of stamps which would be necessary, permit me to say a lease conveys a limited interest in lands, to-wit: the right of possession during the life of the lease, and enjoyment thereof for the purpose for which the lease is executed, and to that extent conveys an interest in the land and is required to carry the stamps.

The tax is upon the full amount of the consideration, and without reference to whether it is payable by the month or by the year or any other period.

The proper way to arrive at the necessary amount of stamps is, for instance, if the rental is so much per annum, then multiply the amount of the annual rental by the number of years, as a basis for the tax required.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TOLL BRIDGES—MILITIA AND PREACHERS EXEMPT FROM PAYING TOLL

March 4, 1932.

Dear Sir:

Replying to yours of the 29th ultimo, permit me to say Section 2752 of the Compiled General Laws of Florida, reads as follows:

"The militia of the State, when actually going or returning from muster, or other military services, shall be exempt from paying toll at any of the ferries and bridges in this State. Clergymen and preachers of the Gospel shall also be exempted from paying toll at said bridges and ferries."

I construe this statute to apply to clergymen and preachers of the Gospel and not to the several persons whom such clergymen or preacher might be hauling in his automobile. However, if the persons having charge of the bridge or ferry see fit to extend the exemption to all of those who may be riding with the clergyman or preacher, that is their privilege.

Yours very truly,

CARY D. LANDIS,
Attorney General.

EXTRADITION*, INTERNATIONAL — PROCEDURE FOR MAKING
APPLICATION

March 4, 1932.

Dear Sir:

Replying to your favor of the 2nd instant, relative to international extradition, permit me to say only an officer of the State could properly make application to the Department of State at Washington for the apprehension, arrest, and detention of an alleged fugitive in a foreign country. When application for the arrest of a fugitive in a foreign country is made to the State Department, it is necessary for the State Department to request the American Minister in the foreign country to prefer a charge in that country before a judicial officer, corresponding to our committing magistrates, and of course, the State Department at Washington will not request our Minister in the foreign country to prefer a charge of crime against an alleged fugitive, unless the State Department at Washington has documentary evidence of the fact that the alleged fugitive is under indictment in the demanding State.

Therefore, it will be necessary for the State's Attorney of the Circuit in which the indictment is pending, or for the Governor of the State of Florida, to make application to the State Department at Washington for the arrest and detention of the alleged fugitive.

Permit me to suggest, if available, that you read Moore on Extradition, Volume 1, pages 335 to 338, and if in need of further information on the subject, that you apply to the State Department at Washington for instructions.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CANDIDATE—PROMISE TO REFUND TO COUNTY ANY PART OF
COMPENSATION UNLAWFUL

March 7, 1932.

Dear Sir:

This refers to your request for my opinion as to whether or not our statutes prohibit the promise of a candidate to remit or to refund to the county or anyone else any part of the legal compensation or fees of the office to which he aspires.

I beg to advise that my predecessor, Honorable Fred H. Davis, who is now a Justice of the Supreme Court of Florida, rendered an opinion under date of May 8, 1928, a portion of which I quote as follows:

"Section 5918, Revised General Statutes of Florida, prohibits the promising to give or pay any money or anything of value directly or indirectly by any candidate in furtherance of his candidacy for nomination in the primary, except in the manner and for the purposes authorized by that Section.

"Any violation of this Section is made a ground of disqualification for office and punishable by fine and imprisonment.

"In my opinion this Section prohibits the promise by a candidate to remit to the county or to anyone else any part of the legal compensation of the office to which he aspires."

I concur in the above opinion as being the law at this time.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CANDIDATE—CERTAIN METHODS OF ADVERTISING
UNLAWFUL

March 8, 1932.

Dear Sir:

This refers to your favor of the 5th instant, on the above subject, and in reply I beg to advise that, in my opinion, it is clearly a violation of the corrupt practice Act for a candidate for an office to use this method of furthering his campaign.

Political advertising is limited to circulars or hand bills and must bear the name of the publisher, and political advertisements appearing in newspapers must be marked "Paid Advertisement," and nothing in the shape of a gift or that could be construed as remuneration from the candidate to the voter that would in any way influence his vote, is permissible under our laws.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

INTANGIBLE PROPERTY—RETURN FOR TAXATION NECESSARY

March 9, 1932.

Dear Sir:

Replying to your favor of the 4th instant, permit me to say the statute requires the owner of intangible personal property to make a return thereof for the purpose of taxation. If the owner has deposited intangible personal

property as security for a loan, he has not necessarily parted with the ownership thereof. Therefore, such collateral should be returned for taxation by the owner, regardless of whether such property has been deposited as security for a loan, or otherwise.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MOTOR VEHICLES—APPLICATION OF LAW IN RE "FOR HIRE"
LICENSE

March 15, 1932.

Dear Sir:

I am in receipt of your letter of the 2nd instant, making inquiry as to the application to municipalities of Chapters 14764 and 15625, Acts of 1931.

In reply I beg to say that I agree with your conclusions as to Chapter 14764 not applying to municipalities for the reason that Section 5 appears to specifically make an exemption with reference to requiring permits for the operation of motor vehicles for hire within the limits of any incorporated city or town or the suburban territory immediately adjacent thereto.

With reference to Chapter 15625, it appears that the same does apply to municipalities under the provisions of paragraphs 4, 5, 6, 7, 8 and 9 of Section 3 of said Chapter.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SMALL LOAN LAW—CONSTRUCTION

March 18, 1932.

Dear Sir:

This refers to your favor of March 14th, relative to the Small Loan Law, to-wit: Chapter 10177, and your specific reference to Sub-section A of Section 13 of said Chapter.

I have endeavored to study and read this law very carefully and I am forced to the conclusion that Sub-section A of Section 13 means just what it says, to-wit: that the prohibition against the collection of interest in a sum exceeding 10% upon any loan of the amount or value of more than \$300.00 applies where it is a direct or indirect liability and, therefore, applies to any person whether it be in the form of a direct loan or as a borrow, endorser, grantor, surety or otherwise. It may be that this law does work an injustice on some people and yet it seems to me that the language of the law is plain and that this construction must prevail unless and until the Legislature of the State sees fit to change the wording of this Act.

Very respectfully,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT—IN RE BOND ELECTION

March 18, 1932.

Dear Sir:

Replying to your letter of the 11th instant and telegram of this date, I beg to advise that the question of whether bonds authorized by an election held in the year 1926 which have never been sold would depend upon whether at the election on said bond issue a majority of the qualified electors residing in Special Tax School District No. 1 participated in said election by voting thereat.

Section 6 of Article IX of the Constitution as amended by the adoption of Senate Joint Resolution No. 26 at the General Election held in November 1930 empowers counties, districts and municipalities of the State to issue bonds only after the same shall have been approved by a majority of votes cast in an election in which a majority of the free-holders who are qualified electors residing in such counties, districts or municipalities shall participate to be held in the manner to be prescribed by law.

The word "issue" as applied to bonds generally include delivery, and although bonds have been authorized at an election, if they have not been sold and delivered they have not been issued in contemplation of Section 6 of Article IX as amended. In the case of the City of Jacksonville, et al vs. Renfro, bonds have been authorized, executed and validated, but before being issued as contemplated by law, Section 6 of Article IX was amended and the Supreme Court held that the bonds, although theretofore voted, executed and validated could not be issued unless the provisions of Section 6 of Article IX of the Constitution as amended were fully complied with.

If a majority of the free-holders who were qualified electors residing in the Special Tax School District No. 1 at the time of the holding of the Bond Election in question participated in said election by voting, and a majority of the votes cast were in favor of the issuance of the bonds, then the remainder of the authorized issue, or any part thereof may be now issued in the judgment of the Board.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

MOTOR VEHICLE LICENSE LAW—IF PERSONNEL OF LIGHT
HOUSE SERVICE EXEMPT

March 18, 1932.

Dear Sir:

This refers to your favor of March 11th, and I am returning you the file herewith.

The question you propound is whether or not under the motor vehicle license law the personnel of the Light House Service are entitled to the exemption from the purchase of automobile license tags. The only section of

the automobile license and title registration law under which there might be any question would be Section 15 of Chapter 15625, Acts of 1931, which is as follows:

"Vehicles owned and operated by the Federal Government or by officers or enlisted men actually serving in Florida in the United States Army or Navy, by performing duties for the Federal Government in Florida under orders of the Military or Naval authorities shall, when properly identified with tags or plates issued by the proper department of the Federal Government by the commanding officers of the Army or Navy having jurisdiction in the premises be exempted from registration under this Act."

It seems to me that this Section of the law plainly means that the exemption applies only to Government owned and operated vehicles, and the vehicles owned and operated by officers and enlisted men actually serving in Florida in either the United States Army or Navy by performing duties of the Federal Government in Florida under orders of the Military or Naval Department of the United States. If the Light House Service men are a part of the Army or Navy and fall within the requirements of Section 15, and either the Military or Naval authorities shall issue a Government tag or plate, as required by the Act, I have no doubt but that the Motor Vehicle Commissioner would promptly recognize these tags and plates and would exempt them, but unless and until they do so comply with the law in this respect, I do not see how they are entitled under the law to exemption. You mention the Coast Guard and the Public Health Service, but with reference to these men it is my understanding that the proper Federal Departments or officials have supplied or issued tags and plates to these men, I presume on the theory that they are a part of the Navy and do comply with all the requirements of the Act.

Very respectfully yours,

CARY D. LANDIS,

Attorney General.

PRIMARY ELECTION; MANAGEMENT OF GOVERNMENT;
CITIZEN'S RIGHT TO VOTE; TAXATION WITHOUT
REPRESENTATION

March 18, 1932.

Dear Sir:

This refers to your favor of March 15th, in which you ask five different questions.

Answering the first question, I beg to advise that the Primary Election is an election held by the political parties of the State and there is no Independent Party. In order to vote in a Primary Election one must be a member of one of the political parties that participate under the law in the Primary.

In answering your second question, I beg to state that it is not the purpose nor intent of this Government, either State or Federal, to deny its taxpayers a part in the management of the Government.

In answer to your third question, I beg to advise that there is a difference between what is termed a subject in some forms of government and a citizen under our form of government. We have no such person as a subject under our form of government.

Answering your fourth question I beg to advise that the Fifteenth Amendment to the Constitution of the United States did not create citizens, but gave to citizens of the United States certain protection against the denial of the right of a citizen to vote.

In answer to your fifth question, I would state that taxation without representation is a term that is used in various ways, but generally speaking it means the taxation by a government of its citizens without permitting the citizens to have a voice in the election of the officials who may levy the taxes.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LIVE STOCK—APPLICATION OF LAW

March 21, 1932.

Dear Sir:

I am in receipt of your letter of the 3rd instant making inquiry with reference to Section 6956, Compiled General Laws of 1927, and Chapter 14740, General Laws of 1931.

Answering your inquiry with reference to Section 6956, I beg to say that the same does not appear to be limited to tick infested areas.

With reference to Chapter 14740, Acts of 1931, I beg to call your attention to Section 7, which prohibits transportation of certain live stock except under certain conditions named.

With reference to the names and location of cattle inspectors, I respectfully refer you to Hon. R. A. Gray, Secretary of State, in whose office all State commissions of officers are recorded.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CITRUS AND OTHER FRUIT SYRUPS—IF MANUFACTURE AND SALE IN VIOLATION OF PROHIBITION LAW

March 21, 1932.

Dear Sir:

Your letter of the 8th instant to Hon. Doyle E. Carlton, making inquiry whether a permit to a resident of this State to manufacture and sell citrus and other fruit syrups for fountain drink purposes containing one-half of one percent of alcohol would violate in any way the laws of this State, has been referred to this office.

Section 1 of Article Eighteen of Amendments to the Federal Constitution prohibits the manufacture and sale of *intoxicating liquors*. Article Nineteen of the State Constitution and Section 7601, Compiled General Laws of 1927, prohibit the manufacture and sale of *alcoholic and intoxicating liquors*.

In the case of *Village of Marthaville vs. Chambers*, 135 La. 767, 66 So. 193, it is held that near beer containing less than two percent of alcohol is not alcoholic liquor.

In the case of *Stoner vs. State*, 5 Ga. App. 716, 63 S. E. 602, it is held that "the general words 'alcoholic, spirituous, malt or intoxicating liquors' as used in the prohibition statute of 1907 (Acts 1907, P. 81) import only liquors that will produce intoxication when drunk to excess. * * *"

Under the above constructions it appears that the proposed syrup containing only one-half percent of alcohol would not be classed as alcoholic liquors.

This conclusion seems to be substantiated also by a consideration of Section 1 of Article Fourteen of the Amendments to the Federal Constitution, together with certain Federal Prohibition Statutes and certain rules of our Supreme Court.

Section 1 of Article Fourteen, Amendments to the Federal Constitution, contains the following language:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The United States Code Annotated, Title 27, Intoxicating Liquors, Section 78, contains the following language:

"Alcohol may be produced at any industrial-alcohol plant established under the provisions of this Chapter. * * *"

United States Code Annotated, Title 27, Intoxicating Liquors, Section 13, contains the following exemption from the provisions of the Prohibition Act:

"Flavoring extracts and syrups that are unfit for use as a beverage, or for intoxicating beverage purposes."

In the case of *Hall vs. Moran*, 81 Fla. 706, 89 So. 104, our Supreme Court holds as follows:

"The prohibitions of the Eighteenth Amendment are not subject to the commerce clause or to the Fifth, Tenth, and Fourteenth Amendments of the Federal Constitution, but statutory prohibitions of the possession of intoxicating liquors, unconnected with the organic prohibitions through permissible means to aid in enforcing the organic prohibitions, must not violate any applicable provision of paramount law."

In the case of *Wood vs. Whitaker*, 81 Fla. 653, 89 So. 118, our Supreme Court holds as follows:

"While the State may enact and enforce incidental regulations and prohibitions of the possession of intoxicating liquors as a means

to make prohibitions of the Eighteenth Amendment effective, yet as possession is not forbidden, but lawful possession is contemplated by the organic amendment, such incidental statutory prohibitions must not abridge rights conferred by Congress as to such possession, and within the Federal power."

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY OFFICERS—IN RE EXPENDITURES FOR CERTAIN SERVICES

March 22, 1932.

My Dear Sir:

This refers to your favor of March 16 and enclosures, which deals with the question of the expenditures by county officers for such service as may enable such county officers to render just and accurate reports as are required under Chapter 4502 of the Laws of Florida, Acts of 1929.

Specifically, in your instance, I take it the question arises as to whether or not a sheriff or clerk of the Circuit Court or other official is justified or authorized under the law to employ a certified public accountant in the handling of his official accounts.

There is no specific statute that directs the county officers to employ an accountant, nor is there any statute that prohibits it. The statute which has the most direct bearing on this question is, in my opinion, Section 2866, Compiled General Laws, 1927, which is follows:

"2866. *'Net Income Defined'*—The term 'net income' as provided by this law shall mean the residue of the income from such office after deducting all reasonable expenditure for the salaries of clerks and assistants and the necessary expenditures for the proper operation of said office."

The above quoted section of our law, in my opinion, places upon the Clerk of the Circuit Court, Sheriff or other county officer, a duty in the first instance to determine what clerks are necessary or what assistants shall be necessary for the proper operation of his office. The word "assistants" and "necessary expenditures" will include, in my opinion, any kind of help or assistance that is reasonable and necessary, and for which a *reasonable expenditure* is made. Unquestionably, the size of the office, the nature of the business, etc., will have to be considered. The Legislature evidently intended, by this section of the statute above quoted, that officers, in the principal operation and conduct of their office, should be reasonable and that the expenditures should be reasonable; and, yet, at the same time that the officers should have reasonable freedom in the character of the Clerks, assistants or services to be employed, in order that a proper and just account could at all times be made, and that the general requirements of the office could be fully, fairly and accurately carried out.

It seems to me that the entire matter is a question of *practical and reasonable* application of the statute to each particular office, and I do not feel that I can make it any more definite by way of construction from this office, than that as above stated.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CORRUPT PRACTICE ACT—VIOLATION

March 22, 1932.

Dear Sir:

This refers to your favor of the 19th instant, and in reply thereto I beg to advise that it is my opinion that for you to promise the electors of your county that if you are elected you will accept a lower compensation than that which the law provides will be a violation of the corrupt practice Act, and such promise should neither be made or used by you in your campaign.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FLORIDA CENTURY OF PROGRESS COMMISSION—
CONSTRUCTION OF LAW IN RE TO TRANSFER
OF CERTAIN MONEYS BY COUNTY
COMMISSIONERS

March 23, 1932.

Dear Sir:

Section 12 of Chapter 14832, Laws of Florida, Acts of 1931, provides that as soon as may be after the first day of July of each year, the State Treasurer shall make up a complete statement of all moneys paid out upon warrants to the Comptroller during the preceding year, and of the balance on hand as shown by such statements he shall retain to the credit of the Commission a sum equal to ten percent of such balance, and the ninety percent remaining shall be divided into as many equal parts as there are counties in the State, and there shall be remitted one part to each county.

Section 13 of said Act provides that when the moneys mentioned in the preceding Section have been transmitted to the county commissioners of the several counties of the State in accordance with the provisions of the Act, the county commissioners of said several counties shall have the power and discretion to determine whether such moneys shall be converted into the county school fund or to some other lawfully authorized fund or funds, or shall be equally or otherwise apportioned to any two or more of such funds.

Your letter of the 14th instant asks for an opinion as to the work of the Florida Century of Progress Commission being "lawfully authorized." In

other words, as I understand it, you desire an opinion as to whether the county commissioners of the several counties can lawfully transfer the moneys mentioned in Section 12 of Chapter 14832 to a fund to be appropriated to the work of the Florida Century of Progress Commission.

In my opinion this depends on two questions: first, whether the county has been authorized by the Legislature to provide a fund to be used for advertising purposes; second, whether such fund has been actually provided in the county's budget as adopted by the county commissioners at the beginning of the fiscal year.

No county may lawfully appropriate county funds for advertising purposes except by authority conferred by legislative enactment. Neither can county funds be lawfully expended except in pursuance of a budget adopted by the county commissioners pursuant to law.

Section 2306 of the Compiled General Laws of Florida 1927, requires the county commissioners prior to making the tax levy for each year to adopt a budget of all special and extraordinary expenditures contemplated for the fiscal year ensuing, which budget shall set out every item of expenditure contemplated or reasonably to be anticipated during the year for which the same is made and in conformity to the headings of expense accounts prescribed by the State Comptroller, and to designate the particular fund from which each item of expenditure shall be made. The adoption of said budget shall have the force and effect of fixed appropriations, and the same shall not be altered or amended or exceeded, nor shall the expense estimated under one head be paid out of the estimate for any other expense. Section 2304, Compiled General Laws, makes it unlawful to transfer the money of one fund to another fund or to pay from one fund the expenditures legally payable from another fund, except by resolution of the board of county commissioners approved by the Comptroller.

It is my opinion that only those counties which have been authorized by an act of the Legislature to appropriate funds for advertising purposes could lawfully use any of the funds mentioned in Section 12 of Chapter 14832, and only then when such a fund has been provided for in the budget for the fiscal year. In counties where the Legislature has authorized the appropriation of county funds for advertising purposes, but where an advertising fund has not been provided for in the budget for the current year, the moneys mentioned in Section 12 of Chapter 14832 may in the discretion of the county commissioners be held until the beginning of the next fiscal year, and if an advertising fund is provided in the budget for the next ensuing fiscal year, such moneys may then be placed in such fund if the county commissioners elect to do so.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CITIZENSHIP—WHEN ENTITLED TO

March 23, 1932.

Dear Sir:

This refers to your favor of March 21st.

If I understand the facts in this case, the Bagdad Land & Lumber Company has moved its logging work across the State line in Alabama, and some of the people employed by this company have followed its operations, but with no intention of abandoning their citizenship in Florida. In reply I beg to advise that they have a right to keep their citizenship in Florida, and they do not release this by continuing to work, or by even following from business location to business location or from State to State such business so long as it is their intention to keep Florida as their home. They have a right to fish or do any business in Florida that any other citizen would be entitled to do, and they have a right to register, qualify and vote as a Florida citizen under other conditions.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

RACE TRACK—MONEY TO BE EQUALLY DIVIDED AMONG
COUNTIES

March 23, 1932.

Dear Sir:

The Race Track money is divided equally among the sixty-seven counties, but until the first day of July it is not possible to tell just how much money the State will have taken in. After all of the expenses of the racing year will have been paid and 10% deducted of the net amount, which 10% is retained in the Treasury for the operation of the State Racing Commission during the next year, then the balance is divided equally among the counties. Generally speaking, there is a feeling that each county will get some five or

I assume this will be divided sometime during the month of July, and six thousand dollars for this year.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CANDIDATE—ARMY OFFICER MAY QUALIFY

March 24, 1932.

My Dear Major:

This is in response to your request for my opinion as to whether you are qualified to become a candidate for nomination in the Primary and for election in the General Election to the office of State Senator in the State of Florida.

I understand the facts to be that you enlisted in the regular Army April 19, 1906, for a period of three years. That you rendered this service to the United States and was honorably discharged on April 18th, 1909. That you again enlisted for service in the United States Regular Army on April 19th, 1909, for a period of three years, and that you rendered this service and was again honorably discharged on April 18th, 1912. When the World War broke out you again enlisted in the National Army for the duration of the War. That you enlisted on the 14th day of May, 1917 and was honorably discharged from such service on October 31, 1919, and that you are now a retired Army Officer.

I see nothing in this record, or the fact that you are a retired Army officer that in any way disqualifies you from holding any State office and, therefore, it is my opinion that you are qualified to become a candidate so far as your War record is concerned for the office of State Senator or for any other office in the State of Florida to which you might aspire.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

INHERITANCE TAX—CERTAIN MORTGAGE BONDS EXEMPT

March 25, 1932.

Gentlemen:

I am in receipt of your letter of the 2nd instant advising that one Alexander A. Boyd died a resident of that city on April 22, 1931, and at the time of his death was the owner of thirty \$1,000.00 Long Beach Company of Florida, second mortgage bonds, and making inquiry whether there is any likelihood of any inheritance or transfer tax attached in this State to the property above mentioned.

In reply I beg to say that Chapter 14739, Laws of Florida, Acts of 1931, the Inheritance Tax Act, provides in Section 2 that the inheritance tax shall apply whether the party is a resident or non-resident of the State of Florida. Section 3 of the same Act provides that the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible wherever situated.

Only the courts of this State can determine the validity or invalidity of this, or any other statute, but under the ruling of the Supreme Court of the United States in the case of the First National Bank of Boston vs. State of Maine, 76 La. Ed. 211, Advance sheet No. 5, the 6th head-note reads as follows:

"The situs, for succession tax purposes, of shares of stock, not so used in a state other than that of the owner's domicile as to give them a situs analagous to the actual situs of tangible property, is at the domicile of the owner, rather than at the home of the corporation."

Considering the general effect of the above mentioned Supreme Court decision it would appear that the same ruling would apply in the case of the mortgage bonds mentioned in your letter and that an inheritance tax with reference to same may be demanded only in the State in which deceased had his domicile unless the mortgage bonds were so used in this State or in other states as to give them a situs analogous to the actual situs of the property covered by such mortgage bonds.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MOTOR VEHICLES—NOT SUBJECT TO AD VALOREM TAX

April 5, 1932.

Dear Sir:

This refers to your favor of March 30.

The Constitution, Section 13, Article IX, as amended is as follows:

"Section 13. Motor Vehicles, as property, shall be subject to only one form of taxation which shall be a license tax for the operation of such motor vehicles, which license tax shall be in such amount and levied for such purpose as the Legislature may, by law, provide, and shall be in lieu of all ad valorem taxes assessable against motor vehicles as personal property."

You will note that the Constitutional provision provides that motor vehicles shall be subject to only one form of taxation, which shall be a license tax for such motor vehicles, and that the Constitution provides that this shall be in lieu of *all ad valorem taxes*.

It apparently is very clear that there can be no ad valorem taxes placed on automobiles or motor vehicles, either by the State, County or any other agency, including cities.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

SCHOOL PROPERTY—WHEN EXEMPT FROM TAXATION

April 5, 1932.

Dear Sir:

This refers to your favor of the 2nd instant.

Whether or not the school property you mention would be exempt depends more on the facts and the practical use to which the property is placed. If the property was constructed and developed with the idea of running the school wherein you charge for tuition and in that way make money out of the institution, it is my opinion that it is not exempt from taxation. The practical application of the statute in the last analysis must be worked out by

you with the Tax Assessor of your county. If private gain is involved, it is not exempt. If on the other hand the property is used for the benefit of educational purposes, without the element of private gain, it would be exempt under the statute.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX—SALES AGREEMENT SUBJECT TO

April 8, 1932.

Dear Sir:

I am in receipt of your letter of March 22nd and April 4th.

You enclose copy of sales agreement used by the Birmingham Tank Company, and make inquiry whether or not the same is subject to the Documentary Stamp Tax, under the provisions of Chapter 15787, Laws of Florida, Acts of 1931.

In reply I beg to say that this statute provides for the Documentary Stamp Tax to apply on "written obligations to pay money." In my opinion the sales agreement enclosed with your letter when signed by the purchaser, with terms of payment, is an obligation to pay money and is subject to the Documentary Stamp Tax.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COURTS—PERSON CHARGED WITH CRIME MAY DEFEND HIMSELF

March 25, 1932.

Dear Sir:

Replying to yours of the 22nd instant relative to whether a person charged with a crime has the right to defend himself, permit me to say I will answer by quoting Section 11, Declaration of Rights, Constitution of Florida:

"In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury in the county where the crime was committed, and shall be heard by himself, or counsel, or both, to demand the nature and cause of the accusation against him, to meet the witnesses against him face to face, and have compulsory process for the attendance of witnesses in his favor, and shall be furnished a copy of the indictment against him."

Section 4163 of the Compiled General Laws 1927, reads as follows:

"Any person may manage his own cause in any of the courts of his State."

See *Cutts vs. State*, 54 Fla. 21, 45 So. 491.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LOBBYING—LAW RELATING TO

March 25, 1932.

Dear Sir:

Replying to your letter of the 29th ultimo, advising that you are making a survey of the lobbying question in Texas, and making inquiry concerning the lobbying statute of this State, I beg to say that Section 96 of the Compiled General Laws, 1927, provides that whenever any person or persons shall appear before any Committee of the Legislature of the State of Florida for the purpose of advocating or opposing proposed changes or amendments or in any wise discussing a measure or matter being considered by such Committee, such Committee or any member thereof may require such person or persons to state upon oath in writing whether or not he appears in his own individual interests or in the interests of some other person or persons, firm, corporation or corporations and if so, the name or names of such person, etc., and if he has been or is to be paid a fee or any compensation directly or indirectly for such service, or as expenses or otherwise to so appear before such Committee, which written oath is required to be filed with the Secretary of the Senate and the Chief Clerk of the House and spread upon the Journal of each House.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORRUPT PRACTICE ACT—IF CERTAIN ACTS OF CANDIDATE VIOLATIVE

March 25, 1932.

Dear Sir:

Replying to your favor of the 22nd instant, in which you ask to be advised whether or not in my opinion it would be a violation of the Corrupt Practices Act of this State for you as a candidate for Clerk of the Circuit Court and as Clerk of the Board of County Commissioners of Lafayette County to make the public statement that, if elected, you would request the Board of County Commissioners to reduce the salary paid as Clerk to the Board, from \$100 to \$50 per month, permit me to say:

Section 5918, Revised General Statutes of Florida, prohibits the promising to give or pay any money or anything of value directly or indirectly by any

candidate in furtherance of his candidacy for nomination in the primary, except in the manner and for the purposes authorized by that Section.

Any violation of this Section is made a ground of disqualification for office and punishable by fine and imprisonment. In my opinion, this Section prohibits the promise by a candidate to remit to the county or to anyone else any part of the legal compensation of the office to which he aspires. However, inasmuch as it is within the power of the Board of County Commissioners to fix the salary of the Clerk of the Circuit Court as Clerk to the Board, and inasmuch as the statute does not fix the amount of compensation, it seems to me that a promise or statement that, if elected Clerk of the Circuit Court, you would request the Board to reduce the salary of its clerk from the amount now being paid, this would not be a violation of the statute prohibiting promises to give or pay money or anything of value directly or indirectly.

If the salary of the Clerk of the Circuit Court as Clerk to the Board of County Commissioners is fixed by law, I think that a promise by a candidate to refund a part of the legal compensation fixed by statute would be a direct promise to give to the people something of value to which the officer would be entitled, and which under the law he would receive. Therefore, I am not holding that a promise by a candidate to return to the county treasury or to give to the people or any group or organization a part of the salary of an officer fixed by law, would not be a violation of the statute.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CRAWFISH—IN RE IMPORTATION AND RE-SHIPMENT

March 26, 1932.

Dear Sir:

In response to your telephonic request for a statement from this office regarding the transportation and re-shipment of crawfish imported from a foreign country in interstate transit through Florida, permit me to say:

Section 3 of Chapter 14702, Acts of 1931, reads as follows:

"This Act shall be construed and it is here by the intent of the Legislature that this Act shall apply to all crawfish caught, transported, or processed during the closed season *except crawfish lawfully imported from a foreign country for re-shipment outside the territorial limits of the State of Florida*, but in no case will such shipments be permitted to pass through territorial limits of the State of Florida unless accompanied by certified invoice, and same must be shipped from the port of entry."

It is clear from the provisions of the Sections above quoted that crawfish imported from a foreign country to a Florida port may be packed for re-shipment to points outside of the State of Florida during the closed season in this State, provided such shipments are accompanied by certified invoice.

I find nothing whatever in the statute which would prohibit the re-icing of the crawfish at any station in the State of Florida while in transit. I have discussed this matter with the Hon. E. C. Strickland, Shell Fish Commissioner, and he agrees with my views as here expressed.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CRIMINAL COURTS OF RECORD—TERMS OF OFFICE

March 28, 1932.

Dear Sir:

This refers to your favor of the 26th instant in which you request my opinion as to the law covering the terms of office of the Judges of the Criminal Courts of Record of the State.

I respectfully call your attention to the opinion of the Supreme Court of Florida in the case of the State, ex rel., Davis, Attorney General, vs. Collins, reported in 134 So. page 595. It seems to me that this case clearly sets forth the law as to the beginning and termination of the terms of the Judges of the Criminal Courts of Record, and likewise clearly sets forth the law as to the termination of authority under any commission that may have been issued by the Governor to a Judge of the Criminal Court of Record. As I read this case, the Court has stated the law to be that a Judge of a newly established Criminal Court of Record should be appointed by the Governor and hold office for the term of four years. That the four year term of the Judge so appointed begins at the date of the appointment, and that all succeeding terms of four years of any Judge of a Criminal Court of Record should have reference to the beginning of the first term.

This case also holds that the commission issued to an officer is his evidence of his right to hold office, but if the term of the officer as stated in the commission conflicts with the term fixed by the applicable law, then the law governs and not the commission. Thus it is, that in order to determine the terms of office of a Judge of a Criminal Court of Record you should first find the date of the first appointment under the law creating the Court, the date of the first appointment being the beginning of the first four year term. The terms of office then run accordingly in four year cycles, and any appointment in the interim of these cycles would cover only a period to the end of the next ensuing session of the Senate or to the end of the remainder of the four year cycle. As illustrative of a term of office. If a Judge were appointed in 1900, he would be appointed for a term of four years, or the terms of office would run consecutively as follows:

1900 to 1904
1904 to 1908
1908 to 1912, and so on,

At the end of these four year cycles, the office becomes vacant and is vacant in the sense that it is subject to be filled by a properly appointed incumbent, but if no one is so appointed, the officer who is lawfully holding the office at the time of the termination of the regular term would, of course, continue holding the office until a successor was duly appointed and qualified, all of which is provided for by Section 14 of Article XVI of the Constitution, which provides that:

"All state, county and municipal officers shall continue in office after the expiration of their official terms until their successors are duly qualified."

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

NEGRO VOTE—WHEN ALLOWED TO REGISTER AND VOTE

March 30, 1932.

Dear Madam:

This refers to your favor of March 26 addressed to the Honorable R. A. Gray, Secretary of State, to which he has made reply, and he has referred your letter to me.

Whether there will be a Republican Primary or not will depend upon the Republican Party. They have a right under the law to hold a primary. The registration books being open, they are open for the registration of all citizens of voting age who may desire to register, and the voter may indicate whatever political party he may wish to adhere to.

A negro otherwise qualified is entitled to be registered, as is any other person of lawful age.

Very truly yours,

CARY D. LANDIS,
Attorney General.

CITIZENSHIP—DOMICILE—MOVING AWAY DOES NOT NECESSARILY CHANGE

March 30, 1932

Dear Sir:

This refers to your favor of March 28th, in which you raise the question as to whether or not a man who owns a farm and has lived in one district and then moves into another district can retain his domicile or home in the original district after he has moved his family out of that district into another district.

In reply I beg to advise that a man may move his family temporarily from his home into another district and retain his domicile or home in the original

place from which he moved. A man's domicile or home is at the place where he calls home and to which he means to return, and any absence therefrom is only temporary, and that if he moves away from such place that he at all times intends to return to it as his home. In other words, the question of domicile or permanent home is very largely a matter of a person's intentions. The fact that one moves away from his permanent home for the convenience of labor, work, occupation or for business reasons but all the time with the intention of returning after the particular work, business or occupation is completed, under such circumstances he does not lose his right of citizenship and domicile at his original home.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORPORATION—NOT EXEMPT FROM TAXATION

March 20, 1932.

Dear Sir:

This refers to your favor of the 25th instant.

If I understand the matter correctly, the A. B. Edwards Company is a corporation organized under the laws of Florida, but is not organized as a corporation *not for profit*. Therefore, in my opinion, your corporation is not exempt from the tax, and that it is immaterial that the company was a mere holding company and did not actually make any profit. Inasmuch as the tax return was due on July 1st, it is my opinion that the corporation will be liable and will have to pay the tax which should have been paid along with the report which was required to be filed on July 1, 1931. If you dissolve the corporation prior to the time for filing the next required report, I assume that this would avoid the payment of any further tax under the Act. Section 7 of the Act, however, would of course require you to make a report of dissolution, but you would not be required to pay the tax.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SCHOOL BOARD—METHOD OF ELECTING MEMBERS, LEVY COUNTY

March 31, 1932.

Dear Sir:

This is in reference to your rfavor of March 30, in which you state, "please inform me if members of school board in Levy County are elected by district or county wide."

Section 252 of the Compiled General Laws, 1927, provides among other things as follows:

"A county board of public instruction, consisting of three members, one from each school district, to be elected from the several counties at large of this State, and a board of county commissioners of five members, one for each county commissioner's district, elected from the several counties at large of this State, shall be elected by the qualified electors thereof at every general election."

This covers the general election. If you refer to the primary election I would state that the Legislature has attempted to change the rule with reference to the nomination of members of the boards of public instruction in certain counties of the State.

I am enclosing you herewith copy of the primary election laws, and beg to call your attention to the index on page 106, and it will be necessary for you to determine whether or not Levy County, by virtue of its population or other basis provided in these special laws, falls within any of these special laws, and if it does, then Levy County will be controlled by such law.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CANDIDATE—CERTAIN REQUIREMENTS FOR QUALIFYING
INAPPLICABLE

March 31, 1932.

Dear Sir:

This refers to your favor of March 30th, 1932, in which you ask the question as to whether or not where there is no party assessment because there is no salary attached to the office, it is necessary for the candidate to obtain a receipt as a prerequisite before becoming a candidate for such office.

It is my opinion that he does not need to obtain such a receipt, for there is nothing to receipt him for. If there is no salary attached to the office, then there is no fee to be paid and neither the receipt nor the payment of any fee could be made a requirement for qualifying as a candidate.

As to the second question, wherein you ask whether or not it is necessary for a candidate for member, County Executive Committee of a party, to comply with the law as to expenditures. As to this, I am in accord with the opinion heretofore rendered by former Attorney General, Fred H. Davis, to the effect that it is not a nomination but a party election, and, therefore, the law on expenditures would be inapplicable to such person.

Very respectfully yours,

FRED H. DAVIS,
Attorney General.

DOCUMENTARY STAMPS—CERTAIN BILL OF SALE DOES NOT
REQUIRE

March 31, 1932.

Dear Sir:

This refers to your favor of the 29th instant.

I think you are correct in your opinion that a bill of sale conveying personal property for a cash consideration paid in full contemporaneously with the execution of the bill of sale requires no documentary stamp under the 1931 law. Of course, you have in mind personal property other than shares or certificates of stock, or profits or interest in property or accumulations in any corporation, or the right to subscribe for or to receive such shares or certificates.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BONDS—NO LIMIT TO LEVY OF TAXES FOR PAYMENT

April 1, 1932.

Dear Sir:

This replies to your favor of the 31st ultimo.

I do not exactly understand your question, but generally speaking, there is no limit whatever to the levy of taxes for the payment of bonds that have been validly voted, executed and delivered. It is a lasting obligation and is binding until finally paid for through a proper levy of taxes.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BEAUTY CULTURE—PERSONS PRACTICING SUBJECT TO
REQUIREMENTS OF LAW

April 1, 1932.

Dear Miss:

This refers to your favor of the 23rd instant addressed to Governor Doyle E. Carlton, the same having been handed this office for reply.

It is my opinion that under Section 4-d of Chapter 14654, Acts of 1931, persons practicing beauty culture are subject to the requirements of this Act, and that persons employed in a beauty parlor whose duties are confined to cutting hair and other functions ordinarily performed by a barber shop are subject to the terms of the Act. It is my opinion that it is immaterial whether the hair cutting is performed for males or females.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

INTANGIBLE PROPERTY TAX—STOCKS AND MORTGAGES
LIABLE

April 4, 1932.

Dear Sir:

I am in receipt of your letter of March 21, with reference to the intangible personal property tax provided for under Chapter 15789, Laws of Florida, Acts of 1931.

First. You make inquiry as to whether the stock in the Milton Gazette, a weekly newspaper, would be subject to this tax. In reply, I beg to say that in my opinion the stock in this corporation would be subject to the tax under Class "A."

Second. You make inquiry with reference to the payment of the intangible tax upon stock owned in a corporation, for purposes of purchasing land. In my opinion the stock in this corporation would also be subject to the intangible tax under Class "A."

Third. You state that you hold a mortgage on a certain tract of land which you are operating as owner and paying the regular taxes on the same, and you make inquiry whether payment of intangible property tax on the same would not be a case of double taxation. In reply, I beg to say that in my opinion a note secured by a mortgage would be subject to the intangible tax under Class "B." Our Supreme Court has held that the owner of notes of credit secured by a mortgage may be taxed upon the value of such notes of credit, although the mortgaged land has also been taxed.

Respectfully yours,

CARY D. LANDIS,
Attorney General.CIRCUIT JUDGE—TERM OF OFFICE IN TWENTY-FOURTH
JUDICIAL CIRCUIT

April 6, 1932.

Dear Sir:

In answer to your inquiry as to the term of office of the Circuit Judge in the Twenty-fourth Judicial Circuit of this State, comprising the counties of Citrus and Hernando, I beg to say that in my opinion the term of office in this particular circuit is controlled by Section 8 of Article V of the Constitution, and the decision of the Supreme Court in Advisory Opinion, 76 Fla. 649, 80 So. 519.

This is a new circuit, and under the terms of the above mentioned constitutional provision and the ruling of the Supreme Court in the above mentioned case, the term of office is the same as the old circuits, in which the cycle of years began to run in 1887. Counting six years to the cycle from that date down would make all of such terms expire in 1935.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CANDIDATE—APPLICATION OF LAW IN RE CAMPAIGN
ADVERTISING

April 7, 1932.

Dear Sir:

This refers to your favor of the 5th instant, in which you quote the following paragraph from opinion rendered by my predecessor, Judge Fred H. Davis, under date of March 23, 1928, as follows:

"I find nothing in the law which would authorize the expenditure of money for displaying advertising by moving picture slides or billboards or electric signs."

I confirm this quoted opinion of Judge Davis.

With reference to the final question as to whether a violation of this law, and upon conviction would disqualify the candidate, and make him ineligible to hold the office or position to which he aspires, I can do nothing more than to refer you to Section 8182 of the Compiled General Laws of 1927, which says in part:

"And shall from and after his conviction be disqualified and ineligible to hold the office or position to which he aspires, or any other State or county office or position, and his name shall not be allowed or printed on the Primary Election Ballot * * *."

Yours very truly,

CARY D. LANDIS,
Attorney General.

PUGILISTIC EXHIBITIONS—PUGILISTIS AND FIGHTING LAW
COVERING

April 7, 1932.

Dear Sir:

The laws of our State pertaining to pugilistic exhibitions and fighting is as follows:

"Article 3. Fighting. 7183 (5081). *Fighting by Appointment.*—Whoever by previous appointment or arrangement meets another person and engages in a fight shall be punished by imprisonment not exceeding six months, or by a fine not exceeding five hundred dollars.

"7184 (5082). *Aiders and Abettors.*—Whoever is present at such fight as an aid, second or surgeon, or advises, encourages or promotes such fight shall be punished by imprisonment not exceeding six months, or by a fine not exceeding five hundred dollars.

"7185 (5083). *Fighting outside of State by appointment made therein.*—Whoever, being an inhabitant or resident of this State, by previous appointment or arrangement made therein, leaves the State and engages in a fight with another person, without the limits thereof, shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars.

"7186 (5084). *Prize Fighting; Pugilistic Exhibitions.*—If any person or persons shall voluntarily engage in any pugilistic exhibition, fight or encounter, with or without gloves, between man and man, or in an exhibition or fight between man and bull, or between man and any other animal, for money or anything of value, or upon the result of which any money or anything of value is to be collected, acquired, bet or wagered, or to see which any admission is charged, directly or indirectly, shall be punished by a fine not less than two thousand five hundred nor more than five thousand dollars, or by imprisonment for not more than five years.

"7187 (5885). *Second, Stakeholder, etc.*—Any person who shall act as second, stakeholder, counsel or advisor, or who shall render aid of any such character, for or to the principal or either of them in such exhibition, encounter or fight, shall be deemed a principal in the offense, and shall be punished as prescribed in the preceding section.

"It shall be the duty of the Sheriff or his deputies, in any county where there is cause to believe that such an encounter or contest is about to occur, to enter any house or enclosure, or any other place, and arrest, without warrant, any party or parties engaged or about to engage in such contest.

"7188 (5086). *Meaning of 'Pugilistic Exhibition.'*—By the term 'Pugilistic Exhibition, encounter or fight, with or without gloves,' as used above, is meant any voluntary fight or encounter, by blows, between two or more persons, for money, prize of any character, points, distinction or fame, or other thing of value, or upon the results of which any money or thing of value is bet or wagered, or for which an admission fee is charged, directly or indirectly: Provided, that nothing contained herein or in any law or municipal regulation shall be construed as applying to boxing exhibitions held by and under the auspices of the American Legion or companies or detachment of the Florida National Guard, Y. M. C. A., or any college which is a member of any recognized amateur, athletic association, whether an admission fee is charged or not: Provided, however, that no prize fight shall be held or permitted under the provisions of this law for a National or International title."

If you wish further information, it will be necessary for you to handle the matter through some attorney engaged in the private practice of law, as this office is not authorized to render advice to others than the State officials and heads of the various departments of the State.

Very truly yours,

CARY D. LANDIS,
Attorney General.

POLL TAX—PAYMENT AND EXEMPTION

April 7, 1932.

Dear Sir:

This refers to your favor of the 6th instant.

Section 708 of the Revised General Statutes of Florida, as amended by Chapter 8585, Acts of 1921, provides for the collection of a poll tax against all persons over the age of 21 years and under the age of 55 years who have

resided in the State more than one year except such as have lost a limb or have become disabled in the army or navy service, which tax shall be paid into the county school fund, etc.

Further exemptions are mentioned in Section 215, Revised General Statutes of Florida, as amended by Chapter 8583, Acts of 1921.

It seems that the words "except such as have lost a limb" when construed in connection with Section 708, as it existed before the amendment made by the 1921 law have the legal effect of exempting any person who has lost a limb, whether in war or not, from the payment of poll taxes.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SEARCHERS—WHEN WITHIN LAW

April 7, 1932.

Dear Sir:

This refers to your favor of the 12th ultimo, relative to your authority as Marshal of the Town of Greenville to stop and search an automobile when you have reason to suspect that such automobile is transporting liquor.

In reply I beg to advise that Chapter 11385, Acts of the Special Session of the Legislature of 1925, provides that sheriffs, deputy sheriffs and other police officers making lawful arrests of any person may lawfully search such persons. It further provides that when arresting anyone for driving while drunk or intoxicated that you can search a person and the car of one so lawfully arrested. I would suggest that you consult this Act and inform yourself of its provisions.

The Supreme Court did not go to the extent of holding that general searches could be made without a search warrant. They were dealing with a particular case where parties were found with a quantity of liquor.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DEMOCRATIC EXECUTIVE COMMITTEE—IN RE PROXIES

April 8, 1932.

Dear Sir:

This refers to your favor of the 3rd instant, relative to proxies by executive committees.

The amended Section set forth in 13761, covering the point in question, reads as follows:

"Proxies may be allowed by executive committees, but each proxy shall reside in the same election precinct, in the case of a Congressional or State executive committee, as the committeeman represented by the proxy, etc."

It seems to me that this section of the law will have to be construed to mean that any proxy, in the case of a Congressional or State Executive Committee, will have to reside in the same election precinct as the committeeman represented by the proxy. The further construction, which it seems to me should be placed upon this, is that the executive committees may determine who can be a proxy within their committee, except that they cannot violate the mandate as to the case of the Congressional or the State executive committee.

In other words, it is my opinion that a county executive committee could establish a rule that any proxy in the county executive committee must reside in the same election precinct as the committeeman who is represented by the proxy. Thus it seems to me that the county executive committee is authorized under this Act to control the situation, and that they can place such requirements upon the proxy as the committee deems best, but that, in the case of the Congressional or State executive committee, they could not waive the fact that a proxy to either of these committees would have to be a resident of the same precinct as the committeeman represented by the proxy.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

REFUNDING BONDS—APPLICATION OF LAW

April 8, 1932.

My Dear Sir:

This refers to your favor of April 5th, in which you raise the question as to whether or not in issuing refunding bonds under Chapter 15772, Acts of 1931, there is any requirement other than what is set forth in this Chapter that should be complied with.

In reading Section 33 of the above mentioned Chapter, wherein the Act says:

"No proceedings shall be required to be taken as to the issuance of any refunding bonds under this Act except those prescribed by this Act, any provisions of any other laws, general or special, to the contrary, notwithstanding,"

it seems clear that the Legislature intended that this particular Chapter should cover all of the requirements of a refunding bond issue under this Chapter.

As a matter of practical mechanics, it seems to me that it might be advisable for the county or agency issuing the bonds to co-operate with the Board of Administration as to the maturity dates, etc. Yet the Act does not seem to make this an essential requirement.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICTS—IN RE COMMISSIONS FOR
ASSESSMENT OF TAXES

April 8, 1932.

Dear Sir:

This refers to your favor of April 4th.

Under the decision of the Supreme Court in the case of Rawls, et al., County Commissioners, vs. State ex rel. Nolan, Tax Assessor, reported in 122 So. Rep. 222, the Supreme Court held that the county assessor of taxes was not entitled to receive from the County Commissioners, commissions for assessment of special taxes levied in special tax school districts.

With reference to the proposed changes in the law regarding such commissions, I would state that there were a great number of acts passed in the 1931 session of the Legislature, based upon population of the counties and other bases of classification, and you will find these laws listed in the Index of the General Acts of 1931, page 1553. No matter what county you have in mind, it will depend upon the specific classification set forth in these various laws as to whether the particular county is involved and is affected by these acts or any of them.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

MARRIAGE LICENSES—FEES ALLOWED COUNTY JUDGES

April 8, 1932.

Dear Judge:

This refers to your favor of April 5th relative to fees of county judges, pertaining to the issuance of marriage licenses.

Section 5848, Compiled General Laws of 1929, provides that the county judge may "issue such license upon payment of his fee of \$2.00." This way a provision brought into the Compiled General Laws from the Acts of 1889. This fee was supplemented and added to by the Act of 1927, which provided that the county judge, for the issuance of each and every marriage license, could charge an additional fee of \$1.00. This meant an additional dollar to the \$2.00 charged under the Act of 1889.

At this time, for the issuing of the marriage license, it is my opinion that the county judge can charge, \$3.00. It is true that under Section 5850, Compiled General Laws, it is provided that in order to obtain a marriage license there shall first be presented and filed with the county judge an affidavit in writing, signed by both parties to the marriage, and this writing must be made and subscribed before some person authorized by law to administer an oath, reciting the truth and correct ages of such parties, etc.

The preparation of this affidavit and the taking of the affidavits by some officer, it seems to me, is an entirely separate matter from the issuance of

the marriage license. The very wording of the statute indicates that any official who is authorized to administer an oath could do this, and therefore, it seems to me that this is entirely separate and apart from the issuing of the marriage license. If the party saw fit to engage the services of the county judge to prepare such an affidavit and to execute it before him, it is my opinion that the county judge could make the regular charge for preparing an affidavit and affixing his seal, and that this charge is entirely separate and apart from the issuing of the marriage license, but of course, it would be in addition to the \$3.00 which the law authorizes for the issuance of the marriage license.

Section 5852 provides for the recording of the marriage license, but inasmuch as this is a part of the same law covering the issuance of the marriage license proper, and there is no fee provided by the statute, I am of the opinion that the Legislature intended that the \$3.00 fee would include the services for recording the marriage license.

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

SCHOOL TEACHERS—MONEYS APPROPRIATED BY STATE MAY
BE USED TO PAY PRIOR SALARIES

April 9, 1932.

Dear Sir:

The statute is silent as to whether funds appropriated to the county by the State may be used in the payment of teacher's salary prior to July 1st, 1931, but I am informed by the State Superintendent that this has been and is being done by several of the counties and in my opinion it is permissible.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BALLOT BOXES—THREE SETS REQUIRED

April 9, 1932.

Gentlemen:

Section 406 of the Compiled General Laws of Florida, 1927, requires that the poll lists and oaths of the inspectors and clerks of the primary election, together with all ballot boxes, ballots, ballot stubs, memoranda, and papers of all kinds used by the inspectors and clerks in conducting such election, to be transmitted, sealed up by the inspectors, to the supervisor of registration to be filed in his office and carefully preserved by him until after the next succeeding general election.

In construing this provision of the statute, former Attorney General Fred H. Davis, in a letter dated September 20, 1928, stated that the County Commissioners are required to have two sets of ballot boxes, one for the Primary Election and one for the general election. At that time we had only one primary. The Legislature of 1929 re-established the two-primary system.

Therefore, whereas the statute required two sets of ballot boxes under the one-primary system, it now requires three sets—two to be used for the primary and one for the general election.

This seems to be the legal requirement and I cannot advise any other course.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX—MASTER'S DEEDS IN FEDERAL
COURT PROCEEDINGS SUBJECT TO

April 11, 1932.

My Dear Judge:

This refers to your request for my opinion relative to documentary stamp tax on Master's Deed in Federal Court proceedings.

It is my opinion that documentary stamps should be attached to Master's Deed executed by a Master appointed by a Federal Court just the same as by a Master in a State Court. I see no reason why the same rule would not apply to Masters in both courts.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX—APPLICATION OF LAW IN RE
TRANSACTION INVOLVING PLEDGE OF COLLATERAL
SECURITIES

April 12, 1932.

Dear Sir:

This refers to your favor of April 9th. The problem as you state it is, as follows:

"If A borrows from B, \$1,000.00 and gives to B a collateral form of promissory note made by A and pledges to B as security for the payment of the note a \$1,000.00 note made by C, payable to the order of A and secured by a mortgage on C's property."

Upon these facts what documentary revenue stamps should be attached

If you will look at Section 1 of Chapter 15767 of the Acts of 1931, you will find that a documentary revenue stamp is required on:

"Promissory notes, non-negotiable notes, written obligations to pay money, etc., made, executed, delivered, sold, *transferred or assigned* in the State of Florida, etc."

In the transaction as detailed by you, documentary stamps will be required on the collateral note made by A to B because this is the note that is made in the State of Florida. The note made by C, payable to the order of A and assigned to B as collateral, must also have the required amount of revenue stamps, because this constitutes an assignment of this note. If and when A pays his original note and B re-assigns the note of C to A, this re-assignment will also have to have the full amount of documentary stamps attached.

A note secured by a mortgage, where the note has the proper amount of stamps attached, no stamps are required on the mortgage, and this same rule applies to the assignment of mortgages.

It seems to me that there can be absolutely no question about the requirement of stamps as above stated under the law, and if it works a hardship on the man who has to put up collateral to secure his original note, that is an argument that might appeal to the Legislature, but with reference to which an administrative officer has no control.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

TAX EXEMPTION—NOT ALLOWED ON PROPERTY PURCHASED
WITH MONEY PAID TO VETERANS BY U. S.
GOVERNMENT

April 12, 1932.

Dear Sir:

Your letter of the 4th instant, addressed to the Honorable Doyle E. Carlton, Governor, on the above subject, has been referred to me for reply.

This matter was gone into very thoroughly by former Attorney General, Fred H. Davis, with the Regional Attorney for the Veterans' Bureau of Jacksonville, Florida, and an opinion rendered thereto, same being in part as follows:

"* * * * I am unable to find any legal basis upon which such claim for exemption can be allowed. Unquestionably the funds which constitute the estate of a deceased World War veteran, received from the United States Government are exempt from taxation by the State, but I do not think such exemption can be followed into the land purchased with such funds, which is more than a mere change in the form of the estate. If such theory could be maintained then the salary of a Federal Judge which is exempt from taxation by the State would render exempt his home owned in the State of Florida which was paid for with such salary. The same

would be true of Postmasters and the thousands of other Federal employees who receive United States Government Funds which are invested in various kinds of taxable property."

I have given this matter careful study and consideration and I concur in the opinion rendered by Judge Davis.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PREACHERS—EXEMPT FROM PAYMENT OF TOLLS

April 12, 1932.

My Dear Sir:

Section 2752, Compiled General Laws of Florida, 1927, reads as follows:

"Exemptions from Toll.—The militia of the State when actually going or returning from musters, or other militia service, shall be exempt from paying toll at any of the ferries and bridges in this State. Clergymen and preachers of the gospel shall also be exempted from paying toll at said bridges and ferries."

You will note that this law provides that the exemption of clergymen and preachers of the gospel from paying toll, applies at any of the ferries and bridges in this State. It is my opinion that this is a legislative mandate and covers every bridge and ferry in the State, regardless by whom it is owned or operated. If at any time you are refused this exemption, I would suggest that you lay the matter before the State Attorney of your Judicial Circuit, and state that you have been refused this statutory privilege.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—IN RE DIVIDENDS AND DOCUMENTARY STAMPS

April 14, 1932.

Dear Sir:

I am in receipt of your letter of the 8th ultimo, in which you make inquiry as follows:

"When a dividend is declared by a corporation out of its earned surplus for the year past, payable quarterly during the ensuing year, is it permissible for the stockholders who participate in such a dividend who wish to purchase additional stock, to receive a credit for the entire amount of their dividend to apply toward the purchase of more stock when the first quarterly payment is made, or is it necessary that they receive their credits quarterly in the same manner as those stockholders who elect to take the dividend in cash?"

In reply to the same I beg to say that in my opinion it is permissible for the stockholders in such a dividend to receive credit of the entire amount of their dividend when the first quarterly payment is made, provided the same is not in conflict with the by-laws of the corporation.

You also enclose copy of subscription agreement form used in taking installment stock subscriptions, and make inquiry as to whether Chapter 15787, Acts of 1931, the Documentary Stamp Tax Act, applies thereto, or whether the stamps should be affixed only to the stock or stock book stubs when the stock is fully paid for and actually issued. In reply I beg to say that in my opinion the above mentioned statute applies to the agreement form which you enclose, and also to the stock when issued.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DELINQUENT TAX LIST—IF THE BEACH PRESS QUALIFIED TO
PUBLISH

April 14, 1932.

Dear Sir:

I am in receipt of your letter of the 12th ultimo, enclosing copy of "The Beach Press," of Miami Beach, Florida, and making inquiry whether or not this publication would be proper and legal for the publication of delinquent tax lists.

The copy of the publication enclosed indicates that it is in its fifth year, and that it is published every Friday, but I am not able from viewing the same to determine whether it complies with Chapter 14830, Laws of Florida, Acts of 1931, or Section 4901, Compiled General Laws, 1927.

Chapter 14830 provides that newspapers in which such publications are made must at the time of publication have been continuously published at least once each week, and shall have been entered as second class mail matter at a post office in the county where published for a period of one year next preceding the first insertion of such publication, or in a newspaper which is a direct successor of one so published, or in a newspaper being published at the time of the passage of the act.

Section 4901, Compiled General Laws of 1927, defines newspapers for legal publication as a paper printed and published periodically once a week or oftener, wholly or in large part in the English language, entered or qualified to be admitted and entered as second class matter at a post office in the county where published for sale to the public generally, available to the public generally for the publication of official or other notices, and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where it is published, or of interest or value to the general public.

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY AGRICULTURAL ENUMERATORS' TERM OF OFFICE

April 14, 1932.

Dear Madam:-

I am in receipt of your letter of the 21st ultimo, making inquiry as to the term of office of county agricultural enumerators.

In reply I beg to say that such officials are provided for under the provisions of Sections 3936 to 3938, Compiled General Laws, 1927.

Section 3937 provides for their appointment and duties, but fails to specify the term of office. However, such term of office cannot extend beyond the period of four years, for the reason that Section 7 of Article XVI of the State Constitution, provides that "the Legislature shall not create any office, the term which shall be longer than four years."

Yours very truly,

CARY D. LANDIS,
Attorney General.

COUNTY OFFICERS—CERTAIN EXPENSE NOT AUTHORIZED

April 16, 1932.

Gentlemen:

This refers to your favor of the 14th instant, relative to the county fee officers in Orange County desiring to have an audit of their accounts by public accountants.

It is my opinion that the costs incurred in this manner are not deductible as necessary expense by such officers. The law contemplates that these officers shall keep these books in a correct manner and form, and that all moneys received shall be properly accounted for and set forth in the books of their office. I find no law authorizing an officer of this kind to employ an auditor to audit his accounts. The statute that has the most direct bearing on this question is, in my opinion, Section 2866 of the Compiled General Laws, which is as follows:

"2866. '*Net Income*' Defined.—The term '*net income*' as provided by this law shall mean the residue of the income from such office after deducting all reasonable expenditure for the salaries of clerks and assistants and the necessary expenditures for the proper operation of said office."

The above quoted section of our law, in my opinion, places upon the officers, such as the Clerk of the Circuit Court, Sheriffs, etc., a duty in the first instance to determine what clerks are necessary or what assistants shall be necessary for the proper operation of his office. The words "assistants" and "necessary expenditures" will include, in my opinion, any kind of help or assistance that is reasonable and necessary, and for which a *reasonable expenditure* is made. Unquestionably the size of the office, the nature of the

business, etc., will have to be considered. The Legislature evidently intended, by the section of the statute above quoted, that officers, in the practical operation and conduct of their office, should be reasonable, and that the expenditures should be reasonable; and, yet, at the same time that the officers should have reasonable freedom in the character of the clerks, assistants or services to be employed, in order that a proper and just account could at all times be made, and that the general requirements of the office could be fully, fairly and accurately carried out.

The operation of the above law and its administration, in my opinion, is a question of practical and reasonable application of the statute to each of these officers, and I do not feel that I can make it any more definite to you by way of construction than as above stated.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CANDIDATES—PREREQUISITE FOR HAVING NAME PLACED ON GENERAL ELECTION BALLOT

April 22, 1932.

Dear Sir:

Replying to your favor of the 14th instant, permit me to say under the laws of Florida, the only manner in which a person may have his name placed upon the general election ballot as a candidate this year is by nomination in a primary or by being nominated by the executive committee of a political party.

A person cannot participate in the Democratic or Republican primary election and thereafter become a candidate in the general election. Nor can a person's name be placed upon the general election ballot unless such person has been nominated in a primary election or by the executive committee of a political party, even though such person did not participate in the Democratic or Republican primary.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SHERIFF'S COST BILLS—METHOD OF PAYMENT IN CERTAIN CASES

April 22, 1932.

Dear Sir:

I am in receipt of your letter of the 26th ultimo, advising that Union County has been unable to pay the cost bills of the Sheriff and other officers. You state that these bills have been audited and approved and stand ready for payment, but that the county is unable to pay same at this time.

You make inquiry as to whether or not the Sheriff may assign his approved cost bills to some individual and in that way obtain the money. In reply I beg to advise that I know of no law or reason why the Sheriff may not assign his cost bills when they have been audited and approved by the County Commissioners. In this connection, I do not know of any authority for the county to pay interest on such approved cost bills when assigned. In this situation, the Sheriff will probably not be able to make assignment of such cost bills without the same being discounted.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTION LAW—IN RE VOTING REGISTRATION, POLL TAX

April 25, 1932.

Dear Sir:

Replying to your favor of the 21st instant, permit me to say first that this office is swamped with inquiries regarding election laws, and it is impossible to make a search of the statutes that apply to each and every question set forth in the innumerable letters we are receiving at this time. However, I will endeavor to answer the questions in your letter from my memory of the statutory provisions.

With reference to your first question, permit me to say a person who will not be 21 years of age on June 7th is not eligible to vote in the Primary Election.

Replying to your second question, permit me to say the statute requires the registration officer to note on the registration books those who have paid poll taxes on or before the 21st day of May, which is the last day for the payment of poll taxes prior to the Primary Election of June 7th. This also answers your third question.

Replying to your fourth question, permit me to say a person who does not pay his poll taxes on or before May 21st should not be permitted to vote in the Primary Elections of June 7th and 28th.

With reference to your fifth question, permit me to say it would be unlawful for any person to vote in the Primary Elections of June 7th and 28th, who has failed to pay his poll taxes on or before May 21st of this year.

Replying to your sixth question, I think it would be legal for you to advise the inspectors in writing, with reference to the acceptance of poll tax receipts, when the books show that the particular individual has not paid his poll tax on or before May 21st.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX—EXEMPTION NOT ALLOWED

April 26th, 1932.

Dear Sir:

This refers to your favor of April 22nd, in which you request my opinion as to a case where new notes with the same dates as old notes, and a new mortgage given, but the new notes and mortgage are made after the documentary stamp tax act became effective.

There is no exemption in the documentary stamp tax act, and any and all notes and mortgages made or executed after the act becomes effective must bear the documentary stamps required by that act.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MOTOR TRUCKS—PRIVATE COMMON CARRIERS ALLOWED
16,000 LOAD WEIGHT

April 27, 1932.

Dear Sir:

This refers to your favor of April 26, requesting my opinion as to gross load weight over all, allowed to private contract carriers under the laws of Florida.

Section 1285, Compiled General Laws of Florida, 1927, with reference to weight of motor vehicles, provides as follows:

"Provided, that no motor vehicle shall be operated on a public highway outside of any municipal corporation in this State carrying a load of more than 16,000 pounds, including the weight of such motor vehicle."

This is the general law and applies to all motor vehicles, except as it has been modified by subsequent legislation.

The subsequent legislation affecting the matter of vehicle weight is the Acts of 1931, Chapter 14764. The only modification as to motor vehicle weight made by Chapter 14764 is with reference to (passenger-carrying bus—limited to 18,000 pounds—in which you are not interested and) truck and trailers authorized under certificates of public convenience and necessity in *common carriage*—these trucks and trailers in *common carriage* are allowed a load weight not in excess of 12,000 pounds, and the vehicle weight not in excess of 12,000 pounds or a gross weight not in excess of 24,000 pounds. This total weight under Rule 67 of the State Railroad Commission is reduced to a maximum of 22,000 pounds.

Chapter 14764 classifies private contract carriers and specifically defines them, and they are clearly differentiated from certified carriers in *common carriage*.

Thus it is I am of the opinion that private contract carriers as to load weight are governed by the limitation of 16,000 pounds, including weight of vehicle, as prescribed by Section 1285, Compiled General Laws, above referred to.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

MUNICIPALITIES—MAY LEVY 25% OF STATE LICENSE TAX ON STORES

April 27, 1932.

Dear Sir:

Replying to your favor of the 21st instant, permit me to say the opinion that you have made reference to must have been one based upon Chapter 15624, Acts of 1931, which provides that municipalities may not levy more than 25 per cent of the amount of the State license tax levied upon stores.

Section 8 of the chapter above mentioned defines the term "store" to make and include any store or stores of any mercantile establishment or establishments which are owned, operated, maintained, or controlled by the same person, firm, corporation, co-partnership, or association, either domestic or foreign, in which goods, wares, or merchandise of any kind are sold at retail.

The same section provides that the term "store" shall not include filling stations engaged exclusively in the sale of gasoline and other petroleum products.

Yours very truly,

CARY D. LANDIS,
Attorney General.

VOTING MACHINES—LAW PROVIDING FOR USE IN CONFLICT WITH ELECTION LAWS

April 27, 1932.

Dear Sir:

Replying to your favor of the 21st instant relative to the use of voting machines in primary and general elections, permit me to say it is my opinion that the statute providing for the use of such machines in primary elections does conflict with the Primary Election Laws to such an extent that it would be necessary, before voting machines could be used, to re-enact almost entirely a new Primary Election Law.

You request me to advise in what manner the act providing for voting machines conflicts with the Primary Election Law. Permit me to say that it conflicts in so many particulars, that it would require quite a long letter to particularly state the several conflicting provisions. However, I might

mention the fact that the Primary Election Laws provide for the printing of ballots for any political party required to hold a primary election, provides for the manner in which the names of candidates shall be printed thereon, provides the manner in which the election inspectors shall handle and dispose of said ballots, and also provides for ballot boxes and the sealing and returning of said ballot boxes to the Supervisor of Registration, as well as innumerable other things which you may ascertain by reference to the Primary Election Law.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MORTGAGE SATISFACTION—DOCUMENTARY STAMPS NOT
REQUIRED

April 27, 1932.

Dear Sir:

Replying to your favor of the 23rd instant, in which you state that you have received a letter from the American National Bank of Winter Haven of Winter Haven, Florida, advising you that a client of yours as mortgagee on Florida real estate must pay a documentary stamp tax of \$2.50 in the discharge of a mortgage, and in which you ask to be advised whether or not this is correct, permit me to say:

The Documentary Stamp Tax law does not require either the mortgagor or mortgagee to pay a documentary stamp tax for the satisfaction of a mortgage.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FLORIDA STATE COLLEGE FOR WOMEN—USE OF TRUCKS

April 27, 1932.

Dear Sir:

This refers to your favor of March 30th.

I have refrained from replying to your letter until I could make a careful investigation of the situation with reference to the Florida State College for Women and the use of the college trucks.

I find that the Florida State College for Women does own, maintain and operate several large auto trucks which are used for its own hauling, to-wit: Freight, coal, garbage, baggage and everything in and around the college, as an institution needs to have done or is responsible for or that will make for the economy and convenience of its students and patrons, all with an effort to hold the cost to the students, patrons and the State down to a minimum, and at the same time give to them the maximum of service.

It has been found by the State Board that it is necessary for the protection of the dormitories and for the maintaining of proper decorum throughout the living quarters of the girl students, that the college authorities should handle all baggage going to and from the dormitories of the institution, all fees charged to go into the State funds for the caring for the institution and the expenses incident to the services to the students of the school, etc. I find that these trucks are not used for hauling for third persons, except wherein such third person may bring equipment to be used in some of the college plays, etc., and because of the responsibility of the State Board for the care, up-keep and maintenance of these buildings and their general protection, the college trucks are used in such business.

In all of these matters I am sure the board has agreed and considers that it is entirely within its legal authority in acting as above outlined and that it has in no way violated the law or breached its good faith to the public. There is no disposition whatever on the part of the college to enter into any phase of private business, but any business that has to deal with or do with the college is clearly within the authority and power of the board to handle and conduct in such a manner as to preserve the institution, its property, its students and its patrons.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CONSTABLE—IN RE NEW BOND

April 27, 1932.

Dear Sir:

Replying to your favor of recent date with reference to constable's bond, permit me to say it appears to me that under the provisions of Sections 2420 and 2421, which prescribe the duties of the county commissioners in connection with county officers' bonds, there is sufficient authority to warrant commissioners in taking appropriate action in this case.

The law requires the constable to make bond in the sum of \$500 for the faithful performance of his duties. You state that a constable in your county was sued for a false arrest and that the surety company paid \$299. It seems to me that the question of whether or not constables should be required to make a new bond depends upon whether or not the conditions of the bond are such as to make the bonding company liable up to the maximum amount of the bond for each and every liability that may accrue, or for each and every judgment that may be rendered against the officer, in this case a constable. If, under the provisions of the bond, the bonding company would only be liable for the difference between \$299 and \$500, it is my opinion that the constable should be required to furnish a new bond.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE BOARD OF ACCOUNTANCY—LAW AUTHORIZES EMPLOYMENT OF COUNSEL IN CERTAIN MATTERS ONLY

April 28, 1932.

Dear Sir:

I am in receipt of your letter of the 7th instant, relative to the Accountancy Act, Chapter 15637, Acts of 1931.

You make inquiry whether or not the above mentioned statute authorizes the State Board of Accountancy to employ an attorney. You also call attention to Sections 2 and 23.

In reply I beg to advise that in my opinion the above mentioned statute does not authorize employment of a general attorney but under the provisions of Section 22 of the Act, there appears to be authority for the employment of counsel in certain matters therein mentioned.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX—METHOD OF PAYMENT IN RE EXTENSION OF EXISTING OBLIGATION

April 29, 1932.

Dear Sir:

This refers to your favor of the 28th instant, making inquiry as to the necessity of documentary stamps being attached to a note upon an extension of an existing obligation. The copy of the letter of extension which you enclosed recites that the mortgage is to be extended for a period of *not exceeding three years* on payment of interest and so long as taxes are kept paid and property cared for.

Inasmuch as the payments of interest as stated by you are semi-annual payments, it seems to me that on the particular wording of the extension as given by you means that you consent to the extension each time for each six months, but not beyond a period of three years. Therefore, I am of the opinion that under this particular wording documentary stamps should be attached each time interest is paid. On the other hand, if you made simply one extension and that was for a definite period of three years, then I think attaching revenue stamps once for this extension would be sufficient to comply with the law.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX—MORTGAGE FORECLOSURE,
RECEIVER NAT'L BANK, NOT REQUIRED TO PAY

April 29, 1932.

Dear Sir:

This refers to your favor of the 27th ultimo.

Where a Receiver of a National Bank forecloses a mortgage, and is the purchaser, it is my opinion that Documentary Stamps are not required.

Yours very truly,

CARY D. LANDIS,
Attorney General.

NEGROES—REGISTRATION AUTHORIZED, NOT PERMITTED TO
VOTE IN PRIMARIES

April 30, 1932.

Dear Sir:

Replying to your letter of April 25th, in which you ask to be advised whether or not colored people can register for the coming election, permit me to say the law requires registration officers to register all persons applying for registration; and the law requires each registrant to declare his party affiliation.

While negroes are permitted to register, under the resolution of the State Democratic Executive Committee they will not be permitted to vote as Democrats in the primaries of June 7 and 28.

Very truly yours,

CARY D. LANDIS,
Attorney General.

LAWYERS—OCCUPATIONAL LICENSE TAX REQUIRED

April 30, 1931.

Gentlemen:

This acknowledges receipt of your letter of the 29th instant, requesting my opinion as to whether or not the county tax collector should collect occupational license tax from lawyers who are employed in law offices as assistant or clerks, but who are not members of the firm.

It is my opinion that anyone who has been admitted to the practice of law and then enters the practice, whether he does it on his own account or as a member of a firm or as an assistant or clerk in a law firm, that he is subject to and should pay the occupational license tax required of lawyers. It seems to me that this is the only reasonable construction that can be given to the statute.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

KIDNAPPING—PUNISHMENT, LIFE IMPRISONMENT

May 2, 1932.

Dear Sir:

This refers to your favor of April 29th.

Kidnapping generally in Florida is punished by imprisonment not exceeding ten years, for the kidnapping of a child under the age of fifteen years, the punishment shall be life imprisonment in the State Prison.

Very respectfully yours,

CARY D. LANDIS,

Attorney General.

COUNTY OFFICER—CONTRARY TO SPIRIT OF LAW FOR ONE
PERSON TO HOLD TWO POSITIONS

May 3, 1932.

Dear Sir:

This refers to your favor of the 28th ultimo, in which you raise the following question:

Can one person serve as County Superintendent of schools and as principal of a school and draw pay for the combined positions.

I note your reference to Section 15 of Article XVI of the Constitution, as well as opinion of my predecessor, the Hon. Fred H. Davis, on May 7th, 1928, which opinion is in the Biennial Report for 1927-28 on page 220. While there may be nothing specifically in the law prohibiting the person from acting as County Superintendent of Schools and as principal of the school and draw pay for the combined positions, yet it is my opinion that if this matter is ever presented to the Courts that the Courts will probably hold that these two positions cannot be held by one person. Unquestionably, in my opinion, it is contrary to the spirit of the law for the two positions of High School Principal and County Superintendent of Public Instruction to be combined. In other words, it is difficult to see how a superintendent could superintend himself in his own work. My thought is that the law contemplates that the county superintendent shall superintend the work of the different teachers, and this of course cannot be done if he himself is the teacher. Then, there is another matter to be considered. The law unquestionably contemplates that the county superintendent shall supervise the schools of the county, and I cannot see how he could leave his office and go about superintending the schools of the county if at the same time he is to act as principal of the high school.

As I have stated, I cannot definitely say that the law specifically prohibits the holding of these two positions by one person, yet, I very strongly

urge against it, and I believe that if the Courts ever have occasion to rule on the subject they will hold that the combination of the two positions is incompatible and cannot be held by one person.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

PUGILISTIC EXHIBITIONS—CERTAIN ORGANIZATIONS ARE
EXEMPT FROM ALL LAWS AFFECTING SUCH

May 5, 1932.

Dear Sir:

Replying to your favor of the 2nd instant, permit me to say it appears that under the provisions of Section 7188, Compiled General Laws, the American Legion, companies and detachments of the Florida National Guard, the Y. M. C. A., or any college which is a member of any organized amateur athletic association, whether an admission fee is charged or not, are exempt from all laws or municipal regulations affecting them in the conduct of pugilistic exhibitions.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FLORIDA SECURITIES COMMISSION—APPLICATION OF LAW
IN RE STOCKS, BONDS, SECURITIES AND ASSIGNMENTS
OF CELO SECURITIES COMPANY

May 5, 1932.

Dear Sir:

This refers to your favor of May 4th, in which you ask three questions, the first being as follows

"First. Assume that Celo Securities disposes of Celo stock by exchanging same for various stocks, bonds, etc., of other companies, and that Celo Securities hands over to Municipal, as its representative, such miscellaneous stocks, etc., for sale or conversion. Are these "isolated transactions" within the meaning of Section 5 (c), to which the Act does not apply? Or must Municipal be governed in every such instance by the last paragraph of Section 11?"

In reply to this inquiry I would state that I know of no way for the Celo Securities to dispose of Celo stock by exchanging the same for various stocks, bonds, etc., of other companies, for the reason that in the original disposition of the Celo stock, the sale must be made according to the terms of the permit granted by the Florida Securities Commission. If, however, these stocks were sold in accordance with the original permit and an in-

vestment in other stocks and bonds were made with the money received for the sale of the original stock, and it was such stock or bonds that were being handled by the Municipal Investment Corporation, it is my opinion that you would have a right to sell these securities, but that you would be governed by the last paragraph of Section 11 which you refer to, and that they would not be exempt as isolated transactions.

Your second inquiry is as follows:

"Second. Assume that Municipal desires to deal in Celo Stock, of an issue already registered by qualification, such being distress stock, to be dealt in upon the open market, and not necessarily in accordance with any registered selling plan of Celo Securities. Does Municipal then require to comply with Section 11, last paragraph, even where the intended transactions would be resales of qualified securities, and not original offerings?"

With reference to this inquiry, it is my opinion that after Celo stock is sold in accordance with the original permit and it changes hands and eventually becomes distress stock to be dealt with on the open market, and you are undertaking to handle this stock as a registered dealer, you would have to comply with Section 11 with reference to reporting the class of stock to the Florida Securities Commission.

Your third inquiry is as follows:

"Third. Assume that Celo stock is not to be delivered until 1933, and that sales by Celo Securities are evidenced by Interim Receipts, which are stated on their face to be non-transferable. In authorizing the sale of Celo stock, has the Securities Commission had occasion to pass upon the propriety and good faith of documents similar to the enclosures? In other words, would an original purchaser of Celo stock be able to make good delivery by assigning a non-transferable interim certificate, or is it the proper intention of Celo Securities to preclude, or at least regulate re-sales of such duly qualified Celo stock?"

With reference to this, the Interim Receipts for capital stock being specifically made non-transferable, it is my opinion that this is a definite contract between the Celo Securities Company and the purchaser, and I see no reason why this contract would not be enforceable and, therefore, non-transferable, and that an assignment under the circumstances would not be enforceable as against objections of the Celo Securities Company.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

ELECTION LAW—VOTING WITHOUT PAYING POLL TAX
VIOLATION

May 6, 1932.

My Dear Sir:

This refers to your favor of the 5th instant, in which you state that you note an item in the Times-Union in which it appears that county candidates of Jackson county have met with the County Commissioners and arranged for all white Democrats to vote in the Primary Election without regard to paying poll tax, and that the article stated further that this has been the custom in Jackson county for the past forty years. You also state that a great many citizens in your county are not able financially to spend the \$4.00 to qualify the husband and wife of the household, and you state that you do not see the justice of the people of Jackson county being allowed the franchise, and those of Bay County who are by circumstances unable to pay this tax deprived of their ballot.

As to the statements made in the Times-Union, I know nothing about what the facts are with reference to Jackson county, but the fact is, the general law with reference to the requirement of the payment of poll tax as a prerequisite to vote, is clear, and it is Section 16, page 491, Chapter 13761, Laws of Florida, Acts of 1929, which reads as follows:

"Section 16. That no person, unless exempt under the provisions of law relating to general elections, shall be permitted to vote at a primary election, who shall have failed to pay on or before the third Saturday preceding the day of the first primary election, as herein provided for, his poll tax for the two years next preceding the year in which such primary elections shall be held, nor shall any person be permitted to vote at any such election whose name does not appear on the registration books as required by law."

You will see, therefore, that anyone who does vote without paying his poll tax, as required by this Act, violates the election laws of the State of Florida. The candidates and County Commissioners of no county have a legal right to waive the payment of poll taxes in any way.

Section 8171 of the Compiled General Laws, 1927, is as follows:

"8171. (5907) *Person knowing he is not qualified elector, voting at Primary.*—Whoever, knowing he is not a qualified elector at a primary election, wilfully votes at such primary election, shall, on conviction thereof, be fined in the sum not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, or both, in the discretion of the court."

The law is plain and a penalty is provided for its violation. Of course, it may be that some people will violate the election laws, as they violate all laws, but I cannot believe that the good people of any county would undertake to make a wholesale violation of the election law, because it would be a very serious matter indeed, and might involve numerous elec-

tion contests, etc., with reference to officials who are balloted for throughout the State, or in more than one county. Thus it is, that I see no way that your people can get relief at this time. If the law is wrong, then it is a matter for the Legislature to amend or change the same.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RACING ACT—INTERPRETATION IN RE MONEY INURING TO
COUNTY

May 10, 1932.

Dear Sir:

This refers to your favor of the 6th instant, in which you wish my interpretation of Section 13 of Chapter 14832, Acts of 1931, as to the question whether or not the County Board of Public Instruction can take any steps to secure some of the money inuring to the county under the provisions of what is known as the Racing Act.

It is my opinion that Section 13 above mentioned very clearly places the power and discretion to determine whether such money shall go into the county school fund or funds in the Board of County Commissioners. The Board of County Commissioners being vested with this discretion, it is my opinion that the County Board of Public Instruction cannot in any way force the County Commissioners to place this money, or any part of it in the school fund. It seems to me that your only remedy is to appeal to the Board of County Commissioners for a portion of this fund for the School Board on the question of merit. There is certainly no legal way of forcing the Board of County Commissioners to place it in any particular fund.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

ELECTION, SPECIAL TAX SCHOOL DISTRICT—PREREQUISITE
TO VOTE

May 11, 1932.

Dear Sir:

Replying to your favor of the 9th instant, permit me to say only persons paying a tax upon real or personal property are eligible to vote in a special tax school district election. If the election is to be held for the issuance of bonds, only freeholders are eligible to vote.

The Supreme Court of Florida has defined a freeholder as one who has an immediate beneficiary ownership, interest, legal or equitable, in the title

to a fee simple estate in land, which means that a woman's dower right does not make her a freeholder under the laws of Florida, nor entitle her to vote as such. See *Dean vs. State*, 74 Fla. 277, 77 So. 107.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REGISTRATION LIST—SUPERVISOR AUTHORIZED TO CHARGE FOR COPY

May 12, 1932.

Dear Sir:

Replying to your favor of the 9th instant, in which you ask to be advised whether or not the registration officer has authority to charge you \$5.00 for the privilege of copying the registration lists at your own expense, permit me to say:

Section 379, Compiled General Laws, provides that every citizen shall be allowed to examine the general county register and each of the precinct registers, while they are in the custody of the Supervisor of Registration, but shall not be allowed to make copies or extracts therefrom.

It further provides that the Supervisor of Registration shall furnish copies of the names, occupations, and residences of any electors, upon payment to him of reasonable compensation therefor, not exceeding the customary fees for copying papers in the office of the Clerk of the Circuit Court, but shall not furnish in writing any other information contained in said registration books.

It appears, therefore, in view of the Section above quoted, that the Supervisor of Registration does have authority to forbid a person to make copies of the registration lists while the same are in the custody of the registration officer.

Yours very truly,

CARY D. LANDIS,
Attorney General.

REAL ESTATE BROKER—LICENSE REQUIRED

May 12, 1932.

Dear Sir:

Replying to your favor of the 9th instant, permit me to say Sub-section (b) of Section 4062, Compiled General Laws, reads as follows:

"Every person, partnership, or corporation who shall in this State for another, and for a compensation or valuable consideration, directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraise, auction, sell, exchange, buy or rent, or attempt or agree to appraise, auction, or negotiate the sale, exchange,

purchase, or rental of any property, or any interest in or concerning the same, shall be deemed and held to be a 'real estate broker' or a 'real estate salesman.'"

In view of the statute above quoted, it appears that if a person appraises real estate for a valuable consideration, directly or indirectly paid or promised, expressly or impliedly, he would be engaging in the business of a real estate broker or real estate salesman, and would be required to have a license as such.

I thoroughly agree with your contention that an engineer is probably better qualified to appraise the value of real estate than many of those engaged in the business of real estate brokers or salesmen, and I do not know what a court of competent jurisdiction would hold regarding the matter, if the particular provision in the statute referred to by you should be presented to such court in a proper proceeding. However, until a court of competent jurisdiction has passed upon the provision, it must be held to be valid.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CANDIDATE—IN RE ADVERTISING NOT RESPONSIBLE FOR
IN CERTAIN CASES

May 13, 1932.

Dear Sir:

Replying to your favor of recent date, permit me to say if an advertisement is placed in a newspaper by a person other than a candidate himself in his own behalf, it is necessary for the advertisement to carry the name of the author.

Where a political advertisement in behalf of a candidate is published in a newspaper, and the same advertisement is reproduced in another newspaper and paid for by friends of the candidate, it should carry the name of the author.

The statute requires a candidate to report all expenditures made by him—candidate with copy and bill for advertisement paid for by such friends. The statute requires a candidate to report all expenditures made by himself or by anyone else in his behalf when done so with his knowledge. However, the statute does not hold a candidate responsible for anything done in his behalf of which he has no knowledge.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RACING ACT—PERMIT GRANTED NOT TRANSFERABLE

May 13, 1932.

My Dear Sir:

This refers to your favor of May 12th, in which you ask whether or not a racing permit granted to a certain party can be surrendered and a new permit in its stead taken in the name of a corporation to be formed.

It is my opinion that this cannot be done. If you look at Section 21 of Chapter 14833, Laws of Florida, 1931, you will see that it provides that:

"No permit or license granted under the provisions of this Act shall be transferable or assignable."

It is my opinion that if the corporation wishes to handle the stock in question, it will be necessary for the corporation to make the regular application for permit just as if no permit had ever been authorized.

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX—FACE VALUE OR PAR VALUE OF STOCK DETERMINES AMOUNT

May 13, 1932.

Dear Sir:

This refers to your favor of the 11th instant, in which you make inquiry with reference to the documentary stamps required on a situation which you state as follows:

"A holding company, whose stock is of par value of \$100.00, issues its shares of stock to acquire the shares of another corporation, whose shares are also of par value of \$100.00, the basis of exchange, however, being two shares of the holding company stock for one share of the corporation stock acquired."

The second paragraph under Schedule "A", Section 1 of Chapter 15787, Laws of Florida, Acts of 1931 (Documentary Stamp Tax Act), among other things, has this language:

"On each original issue, whether organization or reorganization, of certificates of stock issued in the State of Florida, or of profits, or of interests in property, or accumulation by any corporation, on each \$100.00 of face value or fraction thereof, 10 cents * * *."

It is my opinion that when the holding company issues its stock of the par value of \$100.00, that it will have to attach to the stock books documentary stamps in the amount of 10 cents for each \$100.00 of par or face

value. It seems that under the Act it is immaterial what the consideration may be for the sale or transfer of this stock, but that the amount of the tax is based on the face or par value of the stock in question.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX—LEASES REQUIRE UPON FAIR
CONSIDERATION

May 13, 1932.

Gentlemen:

This refers to your favor of May 10th, in which you make inquiry relative to the requirement of the Florida Documentary Stamp Tax Act to a form of lease, copy of which you forwarded with your communication.

In Schedule "A", Section 1, of Chapter 15787, Acts of 1931 (Documentary Stamp Tax Act), we find among other things, the following language:

"On deed, instruments, or writings, whereby any lands, tenements, or other realty or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers or any other person or persons, by his, her, or its direction, on each \$100.00 of the consideration therefor, 10 cents: Provided, that when the full amount of the consideration for the execution, assignment, transfer, or conveyance, is not shown in the face of such deed, instrument, document, or writing, then in such event the tax shall be at the rate of 10 cents for each \$100.00 or fractional part thereof of the consideration therefor."

It is my opinion that the lease which you have submitted does require a documentary stamp to be affixed. It is unquestionably a transfer of interest in real estate. The Act unquestionably contemplates that the amount of the stamp tax shall be based on the consideration for the lease or transfer of interest in real estate at the rate of 10 cents per \$100.00. The fact that the lease may be so framed as that the consideration may be difficult of admeasurement, does not relieve the requirement of the payment of the tax. Under the circumstances, it is my opinion that documentary stamps should be attached upon a value to be estimated fairly as to the value or consideration for the lease. If and when parties with leases such as this attach documentary stamps upon a fair and just basis, that is, as what would probably be the fair consideration, it is my opinion, that the taxing authorities would not question it, but that stamps in such amount are required to be attached, there is no doubt in my mind.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

POLITICAL PARTY—DEFINITION OF

May 13, 1932.

Dear Sir:

Replying to your favor of the 11th instant, Chapter 13761, Acts of 1929, defines a political party as follows:

"Any political party which in either of the two general elections next preceding a primary, poll more than 30% of the entire vote cast in the State for its candidates for presidential electors, or any other officer voted for throughout the State, is hereby declared to be a political party within the meaning of this Article, and shall nominate its candidates for all elective offices to be voted for in the next ensuing general election under the provisions of this Article and not otherwise."

With reference to your second question, permit me to say it is not necessary for the Republicans to have a candidate for each office to be filled, any more than it is necessary for the Democratic party to have a candidate for each office.

You will see by reference to the Chapter above cited that there is no provision for a blank line being placed upon the primary election ballot. Therefore, the name of a candidate cannot be written in on the primary ballot as may be done on the general election ballot. All candidates whose names are placed upon the primary election ballot must qualify either with the Secretary of State or with the Clerk of the Circuit Court, as provided by Section 15 of the Chapter above cited.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CANDIDATE—ASSESSMENT FEE

May 13, 1932.

Dear Sir:

Replying to your favor of May 10th, permit me to say under the authority of the primary law a flat assessment of 3% of the annual compensation of an office is levied against each candidate in the primary for the privilege of running for the office in such primary. The money derived from these fees is to be used by the county for the purpose of helping defray the expense of holding the primary election. Insofar as this particular fee is concerned, it is a straight 3%—no more and no less—and is paid to the Clerk of the Circuit Court in his capacity as Clerk of the Board of County Commissioners.

In addition to the above 3%, the executive committee of the county is authorized to make a special assessment of as much as 2% of the annual salary of the office.

Yours very truly,

CARY D. LANDIS,
Attorney General.

WAR VETERANS—NOT EXEMPT FROM PAYMENT REGISTRATION FEE

May 14, 1932.

Dear Sir:

Replying to your favor of the 15th instant, permit me to say the fee required by Section 11 of Chapter 14899, Acts of 1931, from salesmen of securities, is not an occupational license tax, but a registration fee, and the exemption allowed war veterans as to occupational license tax does not apply.

Yours very truly,

CARY D. LANDIS,
Attorney General.

GENERAL ELECTION—NAME OF NOMINEES IN PRIMARY ONLY,
CAN BE PRINTED ON BALLOT

May 14, 1932.

Dear Sir:

Replying to your favor of the 11th instant, permit me to say under the election laws of 1929 and 1931, the Republican party must nominate its candidates for county, state and national office in a primary election. The time to qualify a candidate for state or national office to be voted on in the primary of this year expired May 8th.

I construe the election laws to mean that a political party in the State of Florida, which is required to nominate its candidates by primary election and fails to make a nomination in that manner, will be precluded from making nominations in any other way.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTOR—MARRIAGE TO FOREIGN SUBJECT DOES NOT
DISQUALIFY

May 17, 1932.

Dear Madam:

Replying to your favor of the 14th instant, permit me to say if you are an American-born citizen of the United States and a citizen of the State of Florida, the fact that you are married to a German subject would not dis-

qualify you as an elector of this State. See Title 8 U. S. C. A., Sec. 9, 1931, Cumulative Annual Pocket Part, page 7.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT ELECTION—QUALIFICATIONS
TO VOTE

May 17, 1932.

Dear Sir:

Replying to your favor of the 12th instant, permit me to say the statute is silent upon the question of whether or not a person, to be an inspector at a special tax school district election, should be a taxpayer. However, only those who pay a real or personal property tax are permitted to vote in such elections. Therefore it would appear to be proper that only those who pay a tax should be permitted to serve as an inspector.

A person who is otherwise qualified as an elector, who is exempt from the payment of poll tax, would be qualified to serve as an inspector in such election.

The statute is silent upon the question of whether a person must be a qualified elector to become a candidate for trustee in a special tax school district election. The statute provides that *any person* who is nominated by petition of five qualified electors shall have his name printed on the ballot.

In a case where property is owned in the name of the husband and the husband pays the real or personal property tax for himself only, the wife is not eligible to vote in a special tax school district election.

Only those paying a tax upon real or personal property are eligible to vote in a special tax school district election, regardless of whether such person is a patron of the school or not.

I have heretofore held and now hold that a person paying a license tax on an automobile should be permitted to vote in special tax school district elections.

A person, firm, corporation or association owning real or personal property entitled to exemption, may waive the exemption and pay the assessed taxes if they wish to do so.

Yours very truly,

CARY D. LANDIS,
Attorney General.

STATE SCHOOL FUND—LEGAL TITLE IN STATE

May 19, 1932.

Dear Sir:

Replying to your favor of the 16th instant, permit me to say the legal title to the State School Fund is in the State of Florida. See Section 3, 4, 5, 6 and 7, Article XII, Constitution of the State of Florida.

Very truly yours,

CARY D. LANDIS,
Attorney General.

WOMAN—ENTITLED TO VOTE AT HUSBAND'S PERMANENT PLACE OF RESIDENCE

May 19, 1932.

Dear Sir:

Replying to your favor of the 17th instant, permit me to say a wife's place of permanent residence is in law presumed to be the same as the husband's place of permanent residence. Therefore, I think a woman from a foreign state, who married a man who was a citizen and resident of the State of Florida in May 1931, and has resided with him in the State of Florida since her marriage, would be entitled to vote in the primary election of June 7th.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INHERITANCE TAX LAW—CERTAIN ESTATE LIABLE

May 19, 1932.

My Dear Colonel:

This refers to your favor of May 18, relative to the Estate Tax Law.

I note that a resident of this State died on May 14, 1931. The question is whether or not his estate is subject to our State Inheritance Tax.

The Legislature of 1931 enacted into law, Chapter 14379, of the Laws of Florida, which was approved May 16, 1931. Following the enactment of this Chapter and as a companion bill with it fixing the levy and application of the tax to all estates of every decedent dying after November 4, A. D. 1930, Chapter 14738 was enacted, which was approved May 18, 1931.

It is my opinion that this is a valid law, and that the Legislature had the lawful authority to enact legislation levying these taxes from and after the date when our constitutional amendment became effective. In the instant case, it seems that the decedent died on May 14, 1931. Therefore, it is my opinion that this estate is liable for these taxes. I did render an opinion with reference to Chapter 15746, Acts of 1931, which undertook to recover back from the

Federal Treasury for the State of Florida that portion of the Federal Estate tax made available by credit or refund provisions under various Federal acts, and I herewith enclose you copy of this opinion as rendered to the Honorable Ernest Amos, Comptroller, under date of February 18, 1932.

Very sincerely yours,

CARY D. LANDIS,
Attorney General.

BALLOT—TWO INSPECTORS MAY ASSIST VOTER IN MARKING

May 19, 1932.

Dear Sir:

Replying to your favor of the 14th instant, in which you ask to be advised whether or not it is compulsory for a voter who is unable to read or write to choose an election inspector to assist him in marking his ballot, permit me to say the statute provides that where an elector requires assistance, two members of the board of inspectors shall assist him in marking his ballot. One inspector alone cannot act, nor can anyone other than a member of such board of election inspectors assist a voter in marking his ballot.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—ALL DEEDS CONVEYING
FLORIDA REAL ESTATE SUBJECT TO

May 20, 1932.

Dear Sir:

This refers to your favor of May 19, in which you request my opinion as to whether or not a deed to Florida real estate, executed and delivered in another State, to a holding Corporation requires a documentary stamp, in accordance with our documentary stamp tax act.

This deed unquestionably requires a documentary stamp attached, because the act, Chapter 15787, requires that all deeds to real estate in this state must have the proper amount of the documentary stamps attached. If the consideration is nominal, then the amount of stamps would be small, but every deed to Florida real estate must have the documentary stamp attached. The opinion you refer to in your communication is with reference to notes and other instruments that require the stamp when the same is executed, delivered, assigned, etc., in the State of Florida.

Very truly yours,

CARY D. LANDIS,
Attorney General.

COURTS—LEGISLATURE ONLY CAN ABOLISH

May 20, 1932.

Dear Sir:

This refers to your favor of May 18, in which you make inquiry as to whether or not the county commissioners of your county have the power to suspend two of your courts for six months or one year. In other words, declare a moratorium and save the expense of the operation of these courts.

The county commissioners have no such authority. These courts have been established by duly enacted laws, and the only body that has any authority, with reference to abolishment or suspension of courts, is the Legislature of the State of Florida.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.DOCUMENTARY STAMP TAX—TEN CENTS PER SHARE TO BE
ATTACHED TO NO PAR VALUE STOCK IN CERTAIN CASES

May 20, 1932.

Dear Sir:

This refers to your favor of May 19th, in which you request opinion as to the requirement of the documentary stamp tax act as above outlined.

In reply I would state that Chapter 15787, Laws of Florida, Acts of 1931, provides that where a certificate is issued without a face value, the tax shall be 10c per share, unless the actual value is in excess of \$100.00 per share, in which case the tax shall be 10c on each \$100.00 of actual value or fraction thereof.

Trusting this gives you the desired information, I beg to be

Yours very truly,

CARY D. LANDIS,
Attorney General.

POLL TAX—LEGISLATURE ONLY CAN SUSPEND PAYMENT

May 20, 1932.

My Dear Sir:

This refers to your favor of May 19, in which you ask this question: "I am writing you for a little information, why is it we citizens of Gadsden County can't do like the people of Jackson County, vote without paying Poll Tax?"

The State law controls the matter of payment of poll tax, and unless a citizen is exempt by virtue of age, etc., the law is mandatory and requires the payment of poll taxes, in order that a citizen may exercise the right of franchise.

The county commissioners or voters of any county have no right or authority to suspend payment of poll tax. The only body that has a right or authority to suspend payment of poll tax is the Legislature. The law could be modified by the Legislature, but by no other body. The law further makes it a crime for a person to vote who has not paid his poll tax and has not complied with the requirements of the law. If a voter in one part of the State wishes to make himself liable for prosecution by violating this law, it does not necessarily mean that a citizen in another part of the State would want to make himself liable for prosecution by violating this law.

If the citizenship of the State feels that the payment of poll tax should not be a requirement to qualify to vote, then this matter should be worked out through the various representatives and senators of the State and the Legislature should modify the law, but until this is done, these requirements must be complied with by all citizens.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BOX BALL ALLEY—LICENSE TAX OF TEN DOLLARS REQUIRED

May 23, 1932.

Dear Sir:

Replying to your favor of the 17th instant, in which you ask to be advised whether or not it is necessary for you to have another State license to operate a box ball alley since you have moved from Fort Myers to Pompano, permit me to say Section 1104 provides that owners or managers of bowling and box ball alleys shall pay a State license of \$10 for each place of business. This would appear to indicate that it will be necessary for you to take out a State license for your new place of business.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BANKS—WHEN NOT REQUIRED TO REGISTER AS DEALERS IN SECURITIES

May 23, 1932.

Gentlemen:

This refers to your favor of May 20, relative to a bank, that is a client of yours, buying and selling securities, most of which will be listed on the stock exchange, but occasionally some of which may not be listed.

It has been the ruling of this office that if banks buying stock as an investment and later decide they wish to change their investment and sell their securities, that this would not necessitate such banks to register as a dealer; but if the banks go into the business as acting as dealers in the securities and buy and sell them as dealers and not as an investment of the banks, then such

banks would have to register as dealers under the Florida Securities Law. Some banks have gone into this business as dealers and have registered, but the banks that buy the securities only as an investment for themselves have not qualified, even though they may conclude to change and sell these unlisted securities.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT—ABOLISHMENT OF

May 23, 1932.

Dear Sir:

Replying to your favor of the 19th instant, relative to the abolishment of a special tax school district in Calhoun County, permit me to say Section 745 of the Compiled General Laws, reads as follows:

"Any special tax school district may at any time under the provisions hereinafter mentioned abolish or extend or contract the limits of such special tax school district; provided that no special tax school district shall be abolished while it has any outstanding indebtedness without first making provisions for the liquidation of such outstanding indebtedness."

See *Gaulden vs. Bellotte*, 79 Fla. 104, 83 So. 866.

Section 746 reads as follows:

"Any special tax school district may be abolished or the limits thereof extended or contracted by a majority vote of an election called by the board of public instruction of the county for the purpose, after publication of such notice as is required to create such special tax district, at which election the qualified voters shall be the same as in elections to create special tax school districts."

Section 747, Compiled General Laws, reads as follows:

"Any two or more contiguous special tax school districts in the State of Florida may be consolidated as hereinafter authorized."

See Sections 748 to 753 inclusive.

You ask to be advised whether or not the school board of your county may legally authorize an election for the abolishment and re-creation of a special tax school district. The statutes appear to authorize the abolishment of a special tax school district provided arrangements for the payment of outstanding indebtedness are made.

Of course, after a special tax school district is abolished, another special tax school district could be created, provided the statutes are complied with.

Permit me to suggest that, if you wish further information on this subject, you might take this matter up with your county attorney, or any other attorney the Board would see fit to consider.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BOARD OF PUBLIC INSTRUCTION—IN RE TRANSPORTATION
OF PUPILS AND COST THEREFOR

May 23, 1932.

Dear Sir:

Replying to your favor of the 19th instant, permit me to say it appears that a board of public instruction of a county is authorized by law to perform all acts reasonable and necessary for promotion of the educational interests of the county. Therefore, it is my opinion that if the board of public instruction deems it to be necessary for the promotion of the educational interests of the county that pupils beyond the eighth grade be transported on the school board bus lines, the board may legally make provision in its budget therefor.

Yours very truly,

CARY D. LANDIS,
Attorney General.

POLL TAX—METHOD OF PAYMENT, LEGISLATURE ONLY
AUTHORIZED TO CHANGE LAW

May 24, 1932.

Dear Sir:

This refers to your favor of May 22nd, 1932, in which you criticize my opinion to the effect that an elector under our law is permitted to transmit his poll tax by United States mail, Express or by telegraphic message, and you ask the question:

"How come you at this late day decided to so rule on this law?"

I beg to advise that I made this ruling promptly when it was first presented to me as Attorney General of the State of Florida, and since having made this ruling, my opinion has been sustained by the Supreme Court of the State of Florida in the case of L. D. McGregor, Plaintiff in Error vs. Tax Collector of Hillsborough County, State of Florida, etc., Defendant in Error. The Supreme Court of the State of Florida held that an elector is permitted under our laws to transmit his poll tax by United States mail, Express or telegraph message, and this opinion of our Supreme Court was concurred in by all members of the Court.

If you think this method of paying poll taxes opens the door for fraud, or that it should have a tendency to corrupt the ballot, then it is for you to appeal to the Legislature of the State of Florida, which is the law making body and the only body that has the power and authority to change our present laws.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX—CERTIFICATES OF DEPOSIT
SUBJECT TO

May 24, 1932.

Dear Sir:

Certificates of deposit in the usual form possess all the requisites of a negotiable promissory note, are written obligations to pay money, and are therefore subject to the Documentary Stamp Tax imposed by Chapter 15787, Laws of Florida, Acts of 1931. This has been my construction as far back as September 24, 1931.

Yours very truly,

CARY D. LANDIS,
Attorney General.

EYEGLASSES OR SPECTACLES—CANNOT BE SOLD WITHOUT
SERVICE OF OPTOMETRIST OR PHYSICIÁN

May 24, 1932.

Dear Sir:

Replying to yours of the 23rd instant, permit me to say it would be a violation of the statute for a person to sell eyeglasses, spectacles, or what you term "sun glasses," unless the place of business selling the same has available the services of a graduate optometrist or physician.

Yours very truly,

CARY D. LANDIS,
Attorney General.

GASOLINE—WHEN LIABLE FOR TAX

May 24, 1932.

Dear Sir:

After a careful reading of the case of Eastern Air Transport, Inc. vs. S. C. Tax Commission, et al. 76 L. Ed. 470, I have reached the conclusion that this case is distinguishable from a case where gasoline is bought in the State exclusively for export.

In Eastern Air Transport vs. S. C. Tax Commission, supra, the purchase was intrastate and the goods purchased were used as a part of the means

of conducting interstate business. On the other hand, in the case of purchase of goods for immediate and exclusive export, where the goods purchased are not used as a part of the supplies or equipment in conducting an interstate business, the goods so purchased thereby form a part of transactions in interstate commerce and are immune from the tax for the sale of gasoline or other like products of petroleum.

On the other hand, if any part of the gasoline so purchased is used in transporting from the State to a foreign state or country, it thereupon becomes a part of the means of equipment for use in conducting a business which constitutes interstate commerce, and the entire purchase would thereby be liable for the tax.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BURIED PROPERTY—METHOD TO PURSUE FOR DOING
EXPERIMENTAL WORK

May 24, 1932.

Dear Sir:

Replying to yours of the 19th instant, permit me to say we have no statute in the State of Florida governing experimental work in connection with the recovery of buried property. We do have statutes prohibiting trespass, and persons doing experimental work in connection with the recovery of buried property would probably have to work in cooperation with the owner or owners of the property upon which such work is done.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LAKE WORTH INLET DISTRICT—METHOD OF ELECTING
COMMISSIONERS

May 24, 1932.

Dear Sir:

Replying to yours of the 20th instant, in which you state that the Lake Worth Inlet District is a public corporation organized by special act of the Legislature of 1915, and that in the Act creating the District it is provided that the Commissioners thereof shall be elected every four years at the general election, as to which you wish to be advised whether or not the commissioners should be nominated in the primary, permit me to say if the Act creating the district provides for the election of the commissioners in the general election,

and there has been no subsequent act amending the provision relative to the election of commissioners, then candidates for commissioner of said district would not be required to be nominated in the primary election.

Yours very truly,

CARY D. LANDIS,
Attorney General.

VOTER—MORALLY BOUND TO SUPPORT NOMINEE OF HIS
PARTY

May 25, 1932.

Dear Sir:

Replying to yours of the 23rd instant, in which you state that you failed to advise whether or not it would be permissible under the Florida law for a person to participate in the primary election, and in the general election vote for a Democratic nominee for one office and for a Republican nominee for another office, and whether a ballot voted in that manner would be counted, permit me to say a person may vote as he sees fit in the general election. He may vote for a Republican for one office and for a Democrat for another office. However, a person registering and participating as a Democrat in a Democratic primary, or as a Republican in a Republican primary, is presumed to be morally bound to support the nominee of the party with which he is affiliated, although there is no way in which a person can be compelled to do so.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CAMPAIGN EXPENSE STATEMENT—COUNTY COMMISSIONERS
AUTHORIZED TO OMIT NAME OF CANDIDATE FROM
BALLOT UNLESS FILED

May 25, 1932.

Dear Sir:

Replying to yours of the 23rd instant, in which you state that you failed to file your first campaign expense statement within the time specified by law, and as a result of your failure to do so the county commissioners have refused to place your name upon the ballot and you wish to be advised if they have a legal right to omit the same, permit me to say if the clerk of the circuit court, with whom expense statements of candidates for county office are required to be filed, has certified to the county commissioners that you failed to file your expense statement within the time required by law, then it is the duty of the commissioners to omit your name from the ballot, and if they

should place your name upon the ballot, after receiving notice of your failure to file the expense statement within the time specified, they would be subject to prosecution under the law.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX—SPECIAL MASTER'S DEED
REQUIRES

May 26, 1932.

Dear Sir:

This refers to your favor of the 23rd instant, in which you ask the question whether or not a deed executed and delivered now by a Special Master, the same being based upon a decree made in December, 1929, should bear documentary revenue stamps.

It is clearly my opinion that such deed should bear the documentary stamps.

You ask the further question as to the amount of revenue stamps that should be attached. It is my opinion that in a case such as you mention, the actual value of the property transferred by the Master's Deed should be the basis for reckoning the amount of documentary revenue stamps required. We must all take notice of the fact that many of these mortgages are for sums far in excess of the value of the land, and therefore, it is my opinion that in such cases a determination should be made of what would be a reasonable present value and that this should be treated as a foundation which should form the basis for the computation of the revenue stamps which should be attached to the deed.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

WEIGHING MACHINES—LICENSE TAX IN RE PLACING OR
OPERATING

May 27, 1932.

Dear Sir:

Replying to yours of the 25th instant, permit me to say paragraph (e) Section 19, Chapter 14491, Acts of 1929, is construed by this office to mean that the license tax provided is to cover the occupation of a person, firm or corporation operating or placing weighing machines, regardless of the number of machines which are placed. Therefore, a license tax of \$15 for the State and \$7.50 for the county is correct.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS TAX—NOT REQUIRED ON DUPLICATE
COPY OF LEASE

May 27, 1932.

Dear Sir:

Answering your inquiry of May 26, with reference to the Documentary Stamp tax Act, Chapter 15787, 1931, I beg to say that in my opinion where one single lease is executed in duplicate, for the purpose of the lessor and the lessee, each retaining a copy thereof, it is necessary to attach the required documentary stamps to one copy only, and that copy should be the one intended to be recorded.

The primary duty to attach such stamps would appear to be on the lessor, but under the provisions of Section 4, of the above mentioned act, the lessee accepting a written lease without the necessary stamps thereon is subject to a penalty.

Very truly yours,

CARY D. LANDIS,
Attorney General.DOCUMENTARY STAMP TAX—WHEN MORTGAGES OR DEEDS
EXECUTED OUTSIDE OF STATE REQUIRE

May 28, 1932.

Dear Sir:

This refers to your favor of the 27th instant, making inquiry as to whether or not in my opinion a mortgage executed outside of the State on real estate in Florida requires documentary stamps to be attached, in compliance with Chapter 15787, Laws of Florida, Acts of 1931.

In my opinion all such instruments conveying an interest in real estate do require the proper amount of documentary stamps. The law is very clear and plain in my judgment on this point. The basis for requiring stamps on such instruments is the fact that it conveys an interest in real estate in Florida. It is entirely immaterial where the deed or mortgage is made. You will note that the law makes a distinction between instruments conveying an interest in real estate and written obligations to pay money. In the case of written obligations to pay money it is a question of where the document is made, executed, etc. I am satisfied this distinction was made purposely when this Act was drafted. If it were a question of executing the deed in Florida, as you suggest then it might be taxing conveyances of real estate in other states, which the Legislature did not intend to do. There certainly is no question in my mind as to the requirement of documentary stamps upon any instrument conveying or transferring any interest in real estate when the real estate lies in Florida. This has been the uniform holding of this office and it has not been questioned by any lawyer anywhere that I am aware of. I feel that if you read the statute carefully you will reach the same conclusion without doubt.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BALLOT—BLIND PERSON OR ONE INCAPABLE OF MARKING
MAY BE ASSISTED

May 30, 1932.

My Dear Sir:

This refers to your favor of the 28th instant, in which you make inquiry as to how a blind person or one incapable of marking his ballot may vote.

Under these circumstances the law requires two of the Inspectors to go with the voter into the booth, and the voter there makes his request to these two Inspectors to mark his ballot. It would be a violation of the law for only one Inspector to go with him. If a voter is blind he has a right when he calls for his ticket, and when he goes into the booth to have the Clerk of the Election read the ballot over to him so that he may direct just what candidates he desires to vote for and the ballot should be marked accordingly. These instructions will be given to all Clerks and managers of the Elections.

Yours very truly,

CARY D. LANDIS,
Attorney General.CORRUPT PRACTICE ACT—PUBLICATION OF THE GRAND JURY
REPORT NOT IN VIOLATION

May 30, 1932.

Dear Sir:

Replying to your favor of the 28th instant, permit me to say it is my opinion that the publication of a grand jury report, if the entire report should be published, would not be a violation of the corrupt practice act, even though the grand jury report did contain statements which might adversely affect the candidacy of a person for office.

With reference to your second question, permit me to say if a Republican elector voting a Republican ticket should write the name of a Democratic candidate upon the Republican ballot, such vote would not be counted. This likewise applies to a person voting a Democratic ticket, who might write the name of a Republican candidate thereon.

Yours very truly,

CARY D. LANDIS,
Attorney General.SPECIAL TAXING DISTRICTS—APPLICATION OF LAW IN RE
ELECTIONS

May 30, 1932.

Dear Sir:

Replying to your favor of the 27th instant, permit me to say it appears that the Fellsmere Cross State Road District, a special taxing district in Indian River and Brevard counties, was created by Chapter 10373, Acts of 1925,

and that under provisions of the Act commissioners are required to be elected on the second Tuesday in July every four years. The Act provides that the commissioners of the district shall call, hold and provide for the election, and that it shall be held in accordance with the general election laws except as otherwise provided in the Act.

You state that there is no provision in the Act governing the nomination of candidates for commissioners of said district. It is my opinion that inasmuch as the Act governing the district provides that the commissioners of the district shall "call, hold and provide for the election," the commissioners are authorized to provide in the call for the election to designate reasonable conditions and qualifications of candidates, and that candidates complying with the qualifications and conditions as set out in the call for the election should be considered eligible as candidates.

The general and primary election laws apparently were designed and intended to govern the nomination and election of candidates for state and county offices. Where an act creates a special taxing district, and there is no general law applicable to the election of commissioners for said district, the nomination and election of such commissioners should be governed by the provisions of the Act creating the district.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BONDHOLDER'S PROTECTIVE COMMITTEE—NOT REQUIRED
TO QUALIFY UNDER FLORIDA SECURITIES COMMISSION
ACT

May 30, 1932.

My Dear Sir:

This refers to your favor of May 27, in which you request my opinion as to whether or not a Bondholders' Protective Committee, organized for the purpose of representing the holders of municipal bonds, is such an organization as would have to qualify under the Florida Securities Commission Act, to-wit: Chapter 14899, Acts of 1931.

In the first place municipal securities are exempt under Section 4 of the act; therefore, it is my opinion that they do not come within the provisions of the securities commission act, unless they should undertake to act as a dealer or salesman, then they would have to qualify as a dealer under Section 11 of the act, which includes securities exempt under Section 4.

However, it is my understanding that these bondholders' Committees do not act in the capacity of a dealer.

Very respectfully,

CARY D. LANDIS,
Attorney General.

ADMINISTRATORS AND EXECUTORS—NON-RESIDENTS
AUTHORIZED TO ACT BUT NOT FOREIGN
CORPORATIONS

May 30, 1932.

My dear Sir:

This refers to your favor of May 24, addressed to the Honorable Doyle E. Carlton, Governor of Florida, which letter has been referred to me for reply.

Permit me to state that Section 5524 of the Compiled General Laws of Florida, authorizes the appointment of non-residents as administrators under the same rules and restrictions as residents of this State. This clearly applies only to natural persons.

Section 6124, C. G. L., provides for the organization of trust companies, and Section 6126, C. G. L., defining the powers of trust companies, in subparagraph 13 authorizes the appointment of trust companies as executors or trustees under a last will and testament.

Section 6145, C. G. L., makes it unlawful after June 7, 1923, for any corporation or association to exercise any of the trust functions then prescribed by the laws of Florida to be exercised by trust companies or associations, or to exercise any of the duties, powers, or enjoy the emoluments, profits or benefits which may be granted or may have theretofore been granted by the Legislature to corporations and/or associations, without such corporations and/or association *first obtaining a charter* under the laws of the State of Florida, granting the exercise of such powers, duties and functions. This, however, by provision of said section, does not apply to any trustee, executor, or administrator appointed under any will executed by a non-resident.

I would suggest that you read the case of Girard Trust Company vs. Tampa Shores Development Company, et al. 95 Fla. 1010, 117 So. 786.

Respectfully yours,

CARY D. LANDIS,

Attorney General.

PRIMARY ELECTION—APPLICATION OF LAW IN RE
QUALIFICATION OF CANDIDATES

May 31, 1932.

Dear Sir:

I am in receipt of your letter of May 19, making inquiry relative to the qualification of candidates in the Primary Election, and with particular reference to candidates for the Legislature.

Answering your inquiry, I beg to call your attention to Sections 386 and 387, Compiled General Laws of 1927, as amended by Section 4 and 5, respectively, of Chapter 13761, Acts of 1929.

Section 386, as amended, provides that each candidate for nomination for an office to be voted for by the electors of more than one county shall qualify not less than thirty days previous to the day of the first Primary Election.

Section 387, as amended, provides that each candidate for nomination for an office to be voted for wholly within a single county shall qualify not less than twenty-five days previous to the day of the Election.

From the above you will observe that the law fixes the dates of qualification without reference to whether the candidates are running for State or County offices.

Very truly yours,

CARY D. LANDIS,
Attorney General.

ELECTION LAW—CONSTRUCTION

June 1, 1932.

Dear Sir:

Replying to yours of the 30th instant, in which you ask several questions regarding powers and duties of election officials, permit me to say I will endeavor to answer the same in the order propounded.

Your first question reads as follows:

"How many ballot boxes can legally be used at each election precinct, regardless of the number of tables and inspectors and clerks employed in the precinct?"

Answer to question 1:

Section 303, Compiled General Laws, requires the county commissioners to secure or prepare one ballot box for each polling place in their respective counties, of sufficient size to receive and contain all the ballots of the particular precinct or voting place for which it is intended. In view of the provisions of Section 303 as quoted above, it appears that there is no authority for more than one ballot box for each precinct or polling place.

Your second question reads as follows:

"Must the ballot box at all times be in view of the public and if so please state specifically where the same should be placed, also the distance from the door?"

Answer to question 2:

Section 308, Compiled General Laws, provides that each polling place shall be presided over by a board of inspectors, and that each polling place shall be railed off and constructed with an opening at one end or side as an entrance for the voter, and an opening at the other for his exit, as a polling place at which to hold the election. The law provides that but one voter shall be allowed in one polling place at a time, and no one except an inspector of the

election (not even a clerk of the election) shall be allowed to speak to the voter while in the polling place casting his vote.

Section 308 further provides that even an inspector shall not have the right to speak or interfere with any voter concerning the manner of his voting or any ballot he may vote.

Section 309 provides that the polls shall be opened at 8:00 A. M. and kept open until sundown, with an adjournment between 12:00 and 1:00 o'clock for one-half hour. During all the time that the election is held and also during the recess taken by the inspectors for lunch, the ballot box is required to be kept in the possession of and in view of two of the inspectors, *who shall not have the key thereof.*

Section 309 also specifically provides that all during the election and during the canvass of the vote, the ballot box shall not be concealed from the public. The latter provision of the law is important, and it should be borne in mind that when a building is designated as a polling place, this building must be so arranged that the public can approach near enough to the ballot box to at all times see the ballot box while the election is being held, and while the votes are being counted.

Section 327 provides that no person shall be permitted within fifteen feet of the polling place. This means that no person shall be permitted nearer than fifteen feet to the *ballot box*, nor any *election booth where voters are casting their votes.*

The statute makes no provision for the distance at which the ballot box must be placed from the door of the building in which the election is being held.

Your third question reads as follows:

"Must the voter be required to approach the ballot box and when depositing his ballot therein, to do so in such way that the public will be able to see that he is not placing more than one ballot in the box?"

Answer to question 3:

The ballot box should be so placed that an elector depositing his ballot therein would be in full view of the public.

Your fourth question reads as follows:

"Is it legal for the inspectors and clerk or clerks to close the polling precinct at any time for any purpose whatsoever until after the voting and the counting of the ballots?"

Answer to question 4:

The polling place during all the time that the election is held and also during the recess taken by the inspectors for lunch, should be kept open.

Your fifth question reads as follows:

"Is it legal to hold an election in such building or buildings where the window panes are covered with paint or other substances which prevents the public from seeing through the glass without difficulty?"

Answer to question 5:

No building should be designated as a polling place unless it can be so arranged that the public can approach near enough to the ballot box to at all times see the same while the election is being held, and while the votes are being counted.

Your sixth question reads as follows:

"Is it legal for any one, that is, a citizen or sheriff or deputy sheriff to interfere with any person or persons who offers to challenge a person offering to vote?"

Answer to question six:

No one, not even an officer, should interfere with a citizen who challenges the right of a person to vote.

Your seventh question reads as follows:

"When a voter is challenged can he be lawfully allowed to vote until he has filed the affidavit required of him by law?"

Answer to question 7:

When an elector is challenged, the inspectors should not permit him to vote until he has made an affidavit as required by Section 404, Compiled General Laws.

Your eighth question reads as follows:

"Is it legal for anyone to physically take an inspector from the polling precinct and thereby prevent him from performing his duties as such inspector and to place some other person in his place and stead as an inspector, when the inspector removed had been legally and lawfully appointed or elected to act as such?"

Answer to question 8:

It would be a violation of the law for any person to in any manner interfere with or attempt to remove from the polling place or precinct an inspector who has been duly appointed by the board of county commissioners.

Your ninth question reads as follows:

"Is it legal for a voter to receive more than one ballot, unless it is shown to the inspectors to have been defaced so that it could not be used?"

Answer to question 9:

Section 334, Compiled General Laws, provides that no elector shall be permitted to spoil more than three ballots, and before an elector is provided with more than one ballot he must return the spoiled ballot or ballots to the inspectors, who are required to make a record of such ballots.

Your question No. 10 reads as follows:

"Is it legal for a voter to vote more than one ballot?"

Answer to question 10:

Of course, it is not legal for an elector to cast more than one ballot.

Your question No. 11 reads as follows:

"Is it legal for an inspector or clerk to allow a voter to vote more than one ballot?"

Answer to question 11:

Of course, it is not legal for an inspector or clerk to allow an elector to cast more than one ballot.

Your question No. 12 reads as follows:

"Is it legal for an inspector or clerk to place ballots into the ballot box?"

Answer to question 12:

The statute requires an elector to place his own ballot in the ballot box. Of course, where a blind person is voting, it would be permissible for the inspector or the clerk and one inspector to assist such blind person in placing his ballot in the box."

Your question No. 13 reads as follows:

"Is it legal for the inspector or clerk to at any time place the ballot box under the table from the view of the public?"

Answer to question 13:

Of course, it would be a violation of the law for the election inspectors or clerk to at any time place the ballot box under the table or in any other place where it would be concealed from the public view.

Your question No. 14 reads as follows:

"Have the inspectors any legal right to have in their possession, custody or control what is commonly known as a duplicate ballot box?"

Answer to question No. 14:

The statute provides that the inspectors shall be furnished one ballot box by the Board of County Commissioners. Therefore, it is my opinion that it would be illegal for the inspectors to have more than one ballot box.

Your question No. 15 reads as follows:

"When the voting has closed according to the hour fixed by law, has the public the right to go into the polling precinct and watch the counting, tallying, and reading of each and every ballot drawn from the ballot box?"

Answer to question 15:

The election inspectors have no authority to deny any person the right to go into the polling place and watch the counting, tallying, and reading of each and every ballot drawn from the ballot box. And it would be a violation of law for the inspectors to deny this right to the people.

Your question No. 16 reads as follows:

"Is it permissible under the primary law for an inspector or clerk to mark any ballot for any elector except one who is blind, who specifically requests such marking?"

Answer to question 16:

Two inspectors may render such assistance as is absolutely necessary to a person who is blind or physically disabled to the extent that he must have assistance in marking his or her ballot. One inspector or clerk cannot act alone in this capacity.

Your question No. 17 reads as follows:

"Is it permissible for any ballot to be marked by an elector at any place other than the election provided for such purpose?"

Answer to question 17:

The statute requires that where an elector must have assistance, two inspectors shall go with the elector to a voting booth and there mark the ballot. No elector should be permitted to mark a ballot in any place other than in one of the booths provided for that purpose.

Your question No. 18 reads as follows:

"Is it permissible to vote an open ballot or allow a ballot to be seen before depositing same in the box?"

Answer to question 18:

It would be a violation of the statute for an elector to permit anyone to see his ballot after it has been marked.

Your question No. 19 reads as follows:

"Must the inspectors open the ballot box in full view of the public and show the same to be empty before allowing the balloting to begin?"

Answer to question 19:

The inspectors should open the ballot box in full view of the public and ascertain that the same is empty before allowing ballots to be placed therein by electors or any other person.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BALLOT DUMMY—WITHIN LAW TO PRINT

June 1, 1932.

Gentlemen:

This refers to your favor of the 1st instant, making inquiry as to whether or not it is a violation of the law to print a dummy ballot.

I know of no law which prohibits your printing a dummy ballot, that is, a ballot on different colored paper and different size of the actual ballot, provided the ballot which you print as a sample has in large letters at the top either the words sample ballot or dummy ballot, preferably dummy ballot. There is no objection to setting out the names of all candidates as they appear on the official ballot, with the squares, etc., showing how and where

the marks should be made in casting the ballot. As stated above, it would be better if these dummy ballots were printed on paper of a different color to that of the official ballot. The words "Official Primary Election Ballot" must be omitted on this dummy ballot and the words dummy ballot placed instead thereof.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTIONS—IN RE BALLOT BOXES AND OPENING OF POLLS

June 1, 1932.

Dear Sir:

Replying to your favor of the 29th instant, permit me to say Section 309 provides that the polls shall be opened at 8:00 A. M. and kept open until sundown with an adjournment between 12:00 and 1:00 for one-half hour.

During all the time that the election is being held and also during the recess taken by the inspectors for lunch, the ballot box is required to be kept in the possession of and in view of two of the inspectors, *who shall not have the key thereof.*

Section 309 also specifically provides that all during the election and during the canvass of the votes, the ballot box shall not be concealed from the public.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DETECTIVE AGENCY—LICENSE TAX REQUIRED

June 4, 1932.

Dear Sir:

Replying to yours of the 30th ultimo, permit me to say Section 1135, Compiled General Laws of Florida, reads as follows:

"Each person, firm, or corporation operating a detective agency shall pay a license tax of \$25."

Section 1136, Compiled General Laws of Florida, reads as follows:

"Each individual who is employed as a private detective shall pay a license tax of \$10. * * *"

In addition to the license tax above mentioned, the counties are authorized to impose a tax of 50% of the amount of the State tax, and I of course do not know the amount a municipality would impose, because the license tax in the different municipalities varies.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CONSTABLE—FEES AND MILEAGE

June 4, 1932.

Dear Sir:

Replying to your favor of the 1st instant, permit me to say where a constable is given a warrant by the County Judge or Justice of the Peace for service on a defendant residing in another county, and the warrant is taken to the other county and approved for service and the defendant arrested and delivered to the constable, who returns him to the county jail of the county from which the warrant issued, upon a proper commitment, the constable is entitled to his mileage, and a constable does have authority to render such service.

With reference to your second question, permit me to say where a prisoner is delivered to a jailer, and a proper commitment has been issued, the constable is entitled to a commitment fee.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTOR—WHEN CONVICTION DOES NOT DISQUALIFY

June 8, 1932.

Dear Sir:

I am in receipt of your letter of June 6th calling attention to a former letter from me to the effect that where a person is convicted of a felony and the case is pending before the Supreme Court on a writ of error, the conviction does not disqualify a person as an elector, and making inquiry whether the same rule applies when such convicted person is a practicing physician and has been cited to appear before the medical licensing board, under the provisions of Section 3415, Compiled General Laws, 1927.

By reference to Section 3415, you will find that the statute prescribes nine different grounds on which the license of a practitioner of medicine may be revoked, suspended or annulled. The second ground mentioned in the statute is where a physician has been convicted by a court of competent jurisdiction of a felony. In an advisory opinion from the Supreme Court to the Governor, 75 Fla. 654, 78 So. 673, the Supreme Court in the fourth headnote to the opinion stated that a conviction is not operative while a supersedeas is effective; and, it is my opinion, that a conviction of a felony recited in Section 3415, as one of the grounds for revoking the license of a practitioner of medicine, would not be operative while the case is pending in the Supreme Court. This rule, however, would not apply to the other eight grounds recited in Section 3415 for revoking such licenses.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FLAVORING EXTRACTS—WHEN UNLAWFUL TO SELL

June 8, 1932.

Dear Sir:

Answering your inquiry of June 6, with reference to flavoring extracts, I beg to call your attention to Section 7609, Compiled General Laws, 1927, which provides that it shall be unlawful for any person to sell any flavoring extract for beverage purposes in the guise of such extracts; and it shall be unlawful for any person to sell any extracts, flavors, perfumes, toilet preparations or medicines, patent or proprietary, for beverage purposes in the guise of such extracts, flavors, perfumes, toilet preparations or medicines, patent or proprietary.

Very truly yours,

CARY D. LANDIS,
Attorney General.

WARRANT, CRIMINAL—WHEN MAY BE SERVED IN ANOTHER COUNTY

June 9, 1932.

Dear Sir:

Replying to yours of recent date, permit me to say under the provisions of Section 8321, Compiled General Laws, it appears that a criminal warrant issued by a County Judge directed to the Sheriff or any Constable of the county in which the warrant is issued, may be served in another county when it is endorsed by some judge or justice of the peace living in said other county, and that it will have the same force and effect as it should have had in the county where it is issued.

Therefore, it appears that when such warrant is endorsed by some judge or justice of the peace living in another county, that the warrant may be served by the Sheriff or Constable of the said other county.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MORTGAGE FORECLOSURE—IN RE SERVICE UPON INSANE WIFE

June 9, 1932.

Gentlemen:

This refers to your favor of June 6th, relative to the question of obtaining proper service upon what you call an insane wife of a party against whom you desire to foreclose a mortgage.

You say that you agree with me if there had been an adjudication of insanity, but you state that in your case there is no adjudication of insanity.

If there has been no adjudication of insanity, then the law unquestionably is that the person stands in the light of the law as a sane person and you could obtain service upon her just as you would obtain service upon any sane person, regardless of where she may be. In my opinion there can be no question about this, for certainly the law presumes all persons are sane until they are adjudicated insane and likewise if they are once adjudicated insane the status continues until there is an adjudication of sanity.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—WHEN DEED TO CEMETERY LOT
REQUIRES

June 11, 1932.

Dear Sir:

This refers to your favor of the 9th instant, in which you state that you hold title to cemetery property under a deed of trust, and whether or not a deed transferring title to a cemetery lot requires a State revenue stamp.

In reply I would state that it is my opinion that such deed will require a revenue stamp. This is not an act of the State or any of its agencies, and I find nothing in the law that would exempt a deed of this character from the requirements of the Revenue Stamp Act.

Yours very respectfully,

CARY D. LANDIS,
Attorney General.

SMALL LOAN LAW—LICENSE NECESSARY

June 14, 1932.

Dear Sir:

Answering your letter of the 9th instant, I beg to say that Section 19 of Chapter 10177, Laws of Florida, Acts of 1925, the Small Loan Law, specifically provides in Section 19 that the said Act shall not apply to Morris Plan Company or companies doing a similar business. This provision of law, however, does not serve to give authority for charging more than the ordinary legal rate of interest, and no company may charge the rates of interest prescribed in the above mentioned statute without securing a license under such statute.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DETECTIVE AGENCY—LICENSE TAX TO BE COLLECTED BY TAX COLLECTOR

June 17, 1932.

Dear Sir:

Replying to yours of the 10th instant, permit me to say I advised you in my letter of June 4th that each person, firm or corporation operating a detective agency is required to pay a state license tax of \$25, and each individual who is employed as a private detective shall pay a license tax of \$10.

I construe this provision of the statute to mean that if you open an office or hold yourself out to the public as a private detective, you would be conducting a detective agency and would be subject to the \$25 license, while, if you are employed by a detective agency as a private detective you would be subject to only the \$10 license.

The license referred to is collectible by the county tax collector, and the city tax collector or city clerk of the county and city in which you expect to practice.

Yours very truly,

CARY D. LANDIS,
Attorney General.

BALLOTS—WHEN INSPECTORS AUTHORIZED TO ASSIST IN MARKING

June 21, 1932.

Dear Sir:

Replying to your request of this date, permit me to say under no circumstances are the inspectors of election authorized to assist any elector in marking his ballot, unless the elector is physically unable to mark it himself. Physical disability means where a person is unable to use his hands, or is so nearly totally blind that he cannot see. The inspectors are not authorized by law to assist an elector in marking his ballot, because the elector is unable to read and write.

It is a violation of law for an elector to permit any person to see his ballot after it has been marked, except, of course, where the elector is physically disabled, in which case the inspector would render assistance, but in no other instance shall a voter permit anyone, including the inspectors or clerk, to see how he marks his or her ballot.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX—NOT DOUBLE TAXATION TO
PLACE ON DEED AND NOTES

June 23, 1932.

Gentlemen:

This refers to your favor of June 21st, in which you request an opinion as to the placing of revenue stamps upon instruments as follows:

A man sells a piece of property and gives a deed for it, and takes a mortgage as part of the purchase price, with notes securing the mortgage. It is my opinion that the deed should bear the full amount of revenue stamps, based upon the actual consideration, including the mortgage as a part of the consideration, and that the notes secured by the mortgage must bear the revenue stamps according to the amount of the notes. In a sense, this may be double taxation, yet double taxation such as this is not violative of any constitutional provision, and unquestionably this was the intention of the Legislature as shown by a careful reading of the Act.

Yours very truly,

CARY D. LANDIS,
Attorney General.DOCUMENTARY STAMP TAX ACT—PROMISSORY NOTES
SUBJECT TO

June 23, 1932.

Gentlemen:

This refers to yours of June 18 *in re* Documentary Stamp Tax Act.

It is my opinion that Chapter 15787, requires all promissory notes made, executed, delivered, sold, transferred or assigned in the State of Florida to have attached thereto documentary stamps in the sum of ten cents on each one hundred dollars, or a fraction thereof.

It makes no difference that the notes are offered for discount or collateral. If the note is made in the State of Florida, it must bear the proper amount of documentary stamps.

Very truly yours,

CARY D. LANDIS,
Attorney General.LICENSES, STATE AND COUNTY—HOW TO BE DETERMINED BY
BAKING COMPANY

June 23, 1932.

Gentlemen:

This refers to your favor of June 22, relative to State and County licenses to be paid by the Seybold Baking Company, which operates plants in Jacksonville, Daytona Beach, Orlando, Miami and Tampa.

Under our law, as stated in the opinion of the attorney referred to by you dated December 27, 1929, the Seybold Baking Company will be required to take out only one State license, and a county license for each separate office in addition to the State license.

Very truly yours,

CARY D. LANDIS,
Attorney General.

PRIMARY ELECTION—PAYMENT POLL TAXES PREREQUISITE
TO VOTE

June 24, 1932.

Dear Sir:

Replying to your verbal request of this date, permit me to say that Section 16 of Chapter 13761 reads as follows:

"That no person, unless exempt under the provisions of law relating to general elections, shall be permitted to vote at a primary election, who shall have failed to pay on or before the third Saturday preceding the day of the first primary election, as herein provided for, his poll taxes for the two years next preceding the year in which such primary elections shall be held, nor shall any person be permitted to vote at any such election whose name does not appear on the registration books as required by law."

The third Saturday preceding the day of the first primary election this year was May 21, therefore, any person paying their poll tax after May 21, 1932, were not eligible to vote in the primary held June 7, nor will such person be eligible to vote at the primary election to be held June 28, 1932.

Very truly yours,

CARY D. LANDIS,
Attorney General.

PRIMARY ELECTION—INSPECTORS AND CLERKS TO SERVE IN
FIRST AND SECOND

June 24, 1932.

Dear Sir:

Replying to your verbal inquiry of this date, permit me to say the inspectors and clerks who are appointed to serve the first primary should also serve in the second primary where one is necessary.

If any of the inspectors or clerks who served in the first primary fail to show up at the polls on election day, in order to conduct the second primary election, their places can be filled by bystanders in the manner pro-

vided for by law. It is not necessary that the County Commissioners name a new set of inspectors and clerks for the second primary. Those appointed for the first primary can serve in the second primary without further appointment.

Very truly yours,

CARY D. LANDIS

Attorney General.

MOTOR VEHICLES—APPLICATION OF LAW IN RE LENGTH OF,
INCLUDING TRAILERS AND SEMI-TRAILERS

June 25, 1932.

Gentlemen:

This refers to your favor of the 20th instant relative to my letter to you of the 17th instant concerning correspondence which you have had with Judge B. A. Meginniss, Attorney for the State Road Department of Florida.

In reply I beg to advise that in my prior letter confirming and ratifying the views of Judge Meginniss I did have in mind the laws of Florida to which you refer specifically, page 17, item 10-A of the laws as compiled by Mr. W. S. McLin. By reference to page 8 of this compilation of laws you will find that trailer and semi-trailer is defined to include: "All four wheel vehicles coupled to or drawn by a motor vehicle." A semi-trailer is defined to include: "Any two wheel vehicle coupled to or drawn by any motor vehicle." This same section of the law defines trucks to include: "Any motor vehicle designed or used principally for carrying things other than passengers, and includes a motor vehicle to which has been added a cabinet box, platform, rack or other equipment for the purpose of carrying merchandise other than the person or effects of the passengers, and, also *any unit consisting of tractor and trailer so constructed as to haul merchandise or loads other than persons.*"

It is my opinion that the law clearly contemplates that all trailers are divided into two classes, to-wit: semi-trailers and trailers. A trailer carries the weight of the load independently and within itself. The diagram of your truck and your description as set forth in your correspondence shows that you have a contrivance attached to a tractor whereby the load weight is carried both by the tractor and the contrivance attached to it, therefore, clearly making the entire vehicle one unit. Having reached this conclusion, it is clearly my opinion that the vehicle which you describe is under Section 10-A, referred to by you, limited to an over-all length of thirty-five feet.

Very respectfully yours,

CARY D. LANDIS,

Attorney General.

MORTGAGE FORECLOSURE—PROPERTY NOT EXEMPT MAY BE
SOLD TO SATISFY DEFICIENCY DECREE

June 28, 1932.

Dear Sir:

Replying to your favor of the 8th instant, permit me to say, as you probably know, the Attorney General is not permitted to render opinions regarding private business transactions to individuals. However, I will say in this instance that where a mortgage on real estate is foreclosed and a deficiency decree is entered, the deficiency decree is against the person and any property not exempt under the law may be levied upon and sold to satisfy the deficiency decree judgment, provided personal service is had upon the defendant.

It is my opinion that the judgment would run for twenty years, unless sooner satisfied, and that this would be true regardless of whether or not the mortgaged property involved in the deficiency decree was subsequently acquired by the party against whom the judgment is obtained.

Yours very truly,

CARY D. LANDIS.
Attorney General.SPECIAL TAX SCHOOL DISTRICTS—IN RE COMMISSIONS OF
TAX ASSESSOR

June 28, 1932.

Dear Sir:

I am in receipt of your letter of the 14th instant relative to commissions to Tax Assessors for assessing property in Special Tax School Districts, and referring to my letter of April 20th to Hon. J. B. Rooney, Superintendent of Public Instruction on the same subject.

In reply I beg to say that while there appears to be no general statute allowing commissions to Tax Assessors for assessing Special Tax School District taxes, Chapter 15663, Acts of 1931, passed under the guise of a general Act, but having only local or special application to certain counties, appears to allow such commissions to Tax Assessors in certain counties. If your county comes within the terms of the Act then your Tax Assessor would appear to be entitled to the commissions provided by the Act. It is a province of the courts to pass on the constitutionality of all statutes.

Answering your fourth question as to whether such commissions for 1932 assessments should be paid from any funds to the credit of the District or from the taxes collected on the 1932 roll, I call your attention to the following language in the latter part of Section 1 of Chapter 15663: "But such commission shall be payable only from the special taxes or special tax district taxes collected." This language indicates that commissions for assessments on each tax roll must be paid from taxes collected on that roll and not from funds that may be to the credit of the district.

This office, as you can well appreciate, cannot undertake to run down hundreds of special acts pertaining to municipalities, districts and counties, and inquiries generally are answered on the basis of the general statutes effective throughout the State. My answer to Mr. Rooney was based on such general statutes.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CHECKS NOT SUBJECT TO

June 28, 1932.

Dear Sir:

I am in receipt of your letter of the 17th instant addressed to my predecessor, Hon. Fred H. Davis, now Supreme Court Justice, in which you make inquiry as to the application of the Documentary Stamp Tax Act, Chapter 15787 of 1931 to post-dated checks.

In reply I beg to advise that the statute does not specifically impose this tax upon bank checks. The only instrument mentioned in the Act which might be considered as applying to bank checks is "written obligations to pay money." In my opinion, an ordinary bank check is only an order for the payment of money, and is not a written obligation to pay money, and the fact that such check may be post-dated would not, in my opinion, have the effect of making such a check a written obligation to pay money. I am, therefore, of the opinion that an ordinary post-dated check is not subject to the documentary stamp tax.

Yours very truly,

CARY D. LANDIS,
Attorney General.

EXECUTIVE COMMITTEES, STATE AND COUNTY—DUTIES IN RE ORGANIZING

June 28, 1932.

Dear Sir:

Replying to your favor of the 24th instant, permit me to say the State Executive Committee of a political party has no mandatory powers over a county executive committee.

With reference to your second question, permit me to say Chapter 13761, Acts of 1929, provides that the outgoing chairman of the State Executive Committee of each party shall, not less than ten days before the first meeting, notify each newly elected member of said committee of the time and place of said meeting. The same Chapter, referring to the county executive committee, provides that the newly elected members of the committee shall within thirty days after their election, meet at the county seat and organize by

electing from among their number a chairman, and such other officers as they may deem necessary or expedient.

The Legislature evidently intended that the outgoing chairman of the county executive committee should, not less than ten days before the first meeting of the newly elected committee, notify the newly elected members of said committee of a time and place of a meeting, the meeting to be held within thirty days after the election. However, it is my opinion that if the chairman of the outgoing committee failed to call a meeting within ten days, and a majority of the newly elected members should convene at the county seat upon the call of any member and organize by electing a chairman, and such other officers as they might deem necessary or expedient, the committee would be legally organized.

Permit me to suggest that you read Section 3 of Chapter 13761, Acts of 1929, for any additional information you may require on this subject.

Very truly yours,

CARY D. LANDIS,
Attorney General.

TAX CERTIFICATES—CONSTRUCTION OF STATUTE IN RE
FORECLOSURE

June 28, 1932.

Dear Sir:

Replying to your letter of the 11th instant, I beg to advise that Section 1 of Chapter 14572, Laws of Florida, Acts of 1929, relates to taxes imposed pursuant to the Constitution and laws of the State irrespective of tax certificates issued upon the sale of property for delinquent taxes.

In other words, Section 894 of the Compiled General Laws of Florida, as amended by Section 1 of Chapter 14572, may be enforced and the tax lien thereby created foreclosed, regardless of whether the property has been sold and a tax certificate issued thereon.

Section 16 of Chapter 14572 relates only to tax certificates and deeds which are invalid on account of any matter or thing not affecting the authority of the State or county to levy the taxes evidenced by such certificate or deed. In other words, if the State or county had the authority to levy and collect a tax, but the certificate or deed issued thereon be invalid for any other reason, Section 16 validates such defect.

Yours very truly,

CARY D. LANDIS,
Attorney General.

RACING ACT—APPLICATION OF STATUTE IN RE DISPOSITION
OF FUNDS

June 29, 1932.

Dear Sir:

Section 12 of Chapter 14832, Acts of 1931, known as the Racing Act, provides that after all salaries and expenses of the Commission have been paid for each fiscal year, ten per cent of the balance in the hands of the State Treasurer in his capacity as Treasurer of the Commission shall be retained to the credit of the Commission to meet expenses, and that all the balance of said money shall be equally apportioned to the several counties.

Section 13 provides that this money shall be transmitted to the county commissioners of the several counties, who shall have power and discretion to determine whether such money shall be converted into the county school fund or to some other lawfully authorized fund or funds, or shall be equally or otherwise apportioned to any two or more of such funds. Unless there be a special or local law to the contrary, these provisions govern.

Yours very truly,

CARY D. LANDIS,
Attorney General.BANKS, TRUST COMPANIES AND BUILDING AND LOAN ASSO-
CIATIONS—STATE COMPTROLLER HAS SUPERVISION
AND MAY APPOINT LIQUIDATOR

June 29, 1932.

Dear Sir:

The statutes of Florida place banks, trust companies, and building and loan associations under the supervision of the State Comptroller. It is also provided that when the Comptroller is satisfied from reports furnished him by a State bank examiner or other evidence, that any bank or trust company has become insolvent or is in default, or is in an insolvent condition or threatened with insolvency because of illegal or unsafe investments, or that its liabilities exceed its assets, or that it is transacting a business without authority of law, or in violation of law, the Comptroller may forthwith designate and appoint a liquidator to take charge of the assets and affairs of such bank or trust company.

The following cases uphold this statute:

State ex rel. Dade County Security Company vs. Bonds, 99 Fla. 1259,
129 So. 260.

State ex rel., etc., vs. Circuit Court for Eleventh Judicial Circuit, et al.,
135 So. 866.

Bank of Bay Biscayne vs. Hankins, 42 Fed. (2d.) 209.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CHICKENS—OWNER NOT PROHIBITED FROM BRINGING INTO
STATE

July 2, 1932.

Dear Sir:

Replying to your favor of June 30, in which you state that you contemplate moving to Florida and engaging in the poultry business, and that you intend to bring your flock of Tennessee chickens, and in which you ask to be advised whether or not you may do so, permit me to say I know of no law or regulation of any department which would prohibit your bringing your chickens to this State.

Very truly yours,

CARY D. LANDIS,
Attorney General.

TAXES, DELINQUENT—PAYMENT WITH BONDS

July 9, 1932.

Dear Sir:

I am in receipt of your letter of the 4th instant, relative to the payment of taxes with bonds.

In reply, I beg to say that Chapter 15054, of 1931, provides for payment with bonds of delinquent taxes for 1929 and prior years, when tax certificates therefor were issued and are held by the State, or by the county, district, or municipality, when such payment is provided for by the proper resolution. Bonds used for such payments are not required to be matured or past due.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—TRUST DEEDS SUBJECT TO

July 9, 1932.

Dear Sir:

Replying to yours of the 6th instant, permit me to say I am under the impression from statements contained in your letter that a bank in your city now in the hands of a liquidator is the trustee for certain bonds secured by a trust deed, which trust deed you wish to transfer from the bank to an individual or a new trustee. It is my opinion that in a transaction of this kind the transfer or assignment of the deed from the original trustee to the successor trustee would under the provisions of Chapter 15787, Acts of 1931, be required to carry documentary stamps on the amount of the consideration involved.

It seems from the statement of facts contained in your letter that no consideration is shown on the face of the deed to be transferred, and if such

is the case, then it is a matter of practical determination of what the assignment of the deed is worth or rather what the actual value of such deed is to the assignees.

Permit me to say the omission of stamps from the instruments named in the Act does not invalidate said instruments, nor is the clerk of the Court authorized to refuse to record such instruments because the proper stamps are not affixed. The penalty attaches to the person for a willful failure to affix the necessary documentary stamps thereto.

Yours very truly,

CARY D. LANDIS,
Attorney General.

HOMESTEAD—NOT SUBJECT OF DEVISE BY WILL—WIFE
ENTITLED TO DOWER

July 10, 1931.

Dear Madam:

Replying to your favor of the 9th instant, permit me to say it is not the custom of this office to advise citizens regarding their private legal affairs and we do not wish to encourage what appears to be the impression among some people that it is the practice of this office to do so, but we will make an exception in your case in this instance.

Replying to your first question, which is as follows:

"If a man dies leaving only a home and there are children of age, can the widow use the home at her demand until her death, or as long as she desired?"

Answer to Question No. 1. Whenever a person who is the head of a family residing in this State, and having his homestead therein, shall die and leave a widow surviving him, but no children, the homestead shall descend to the widow and shall not be the subject of devise by last will and testament; but if there be any child or children surviving him, then the widow shall be entitled to dower or a child's part in such homestead, as she may elect to take a child's part; in other cases, and should she not elect to take a child's part, she shall be confined to dower in such homestead property; but she may take, under the will, such other property as may be given to her thereby or dower therein as she may elect. The widow, where there is a child or children surviving, is entitled to occupy the homestead estate together with the children until a partition of the estate is made."

Question No. 2. Your question number two reads as follows:

"If he leaves a will giving one child more than another, can the widow hold the home until she dies, or sees fit to make a division?"

Answer to Question No. 2. Under the Constitution and laws of Florida a testator has no power to dispose of his homestead by will where he leaves a wife and children.

Question No. 3. Your question number three reads as follows:

"Can a man make his will and give the home to one child, more than one child, or to an outside party, leaving his wife without anything?"

Answer to Question No. 3. A man could make such a will, but it would be so defective that it would be easily set aside by the Court.

Question No. 4. Your question number four reads as follows:

"If he wills the home away from his wife, can she contest the will and hold her endowment and a child's part?"

Answer to Question No. 4. When a person shall die intestate (without making a will), or shall make his last will and testament, and not therein make any express provisions for his wife by giving and devising unto her such part or parcel of real and personal estate as shall be fully satisfactory to her, such widow may signify her dissent thereto in the Circuit Court or County Judge's Court of the county wherein she resides at any time within one year after the probate of such will; and then in that case she will be entitled to dower in the following manner, to-wit: one-third part of all the lands, tenements and hereditaments of which her husband died siezed and possessed, or had before conveyed whereof she had not relinquished her right of dower as provided by law, which said third part shall be and enure to her proper use and behoof in and during the term of her natural life. In which said third part shall be comprehended the dwelling house in which her husband shall have been accustomed most generally to dwell next before his death together with the offices, outhouses, buildings and other improvements thereunto belonging or appertaining. If, however, it should appear to the Judge of the Court to which application is made that the whole of the said dwelling house, outhouses, buildings and other improvements thereunto appertaining cannot be applied to the use of the widow without manifest injustice to the children or other heirs, then such widow shall be entitled to such part, not less than one-third part, as the Court may deem reasonable and just.

Question No. 5. Your question number five reads as follows:

"Is there a section of the law under which a man can sell or mortgage his home without his, deserving, wife's signature?"

Answer to Question No. 5. There is no such statute.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT ELECTION—MILLAGE TO BE
ASSESSED

July 11, 1932.

Dear Sir:

This will reply to your favor of the 6th instant on the above subject, in which you state that under an opinion rendered by former Attorney General Buford it was held that the millage to be assessed after an election should be determined in the following manner, to-wit:

"Take first the ballots cast for the highest rate of millage. If this does not constitute a majority of the ballots cast then add the ballots cast for the next highest rate of millage, and if these two make a majority then the lowest millage voted for on these ballots would be authorized. If the ballots cast for these two rates of millage do not constitute a majority then add the ballots cast for the next lowest rate of millage, and if these three taken together constitute a majority, then the rate of millage is authorized to be fixed on the third lowest amount voted for, and so on.

"The millage cannot be fixed at a higher rate than is authorized by a majority vote. But if, for instance, the majority vote one part for eight mills, one part for nine mills, and one part for ten mills, then the total majority has voted for eight mills or more and the Board would be authorized to adopt eight mills fixed by a majority vote."

It has been the policy of this office for the Attorney General, when he can consistently do so, to follow the opinions rendered by his predecessors in office. The opinion of Judge Buford as quoted above appears to be founded in reason, and does not appear to be contrary to law. While I have been unable to find the opinion of Judge Buford in any of the published reports, it is so well founded in reason and law that I will concur in the same.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT—ELECTION—ONLY THOSE
PAYING AD VALOREM TAX ELIGIBLE TO VOTE

July 12, 1932.

Dear Sir:

Replying to your favor of July 9, permit me to say I have held that the payment of an automobile tag tax does not make a person eligible to vote in a special tax school district election, and I have so held because this is not an ad valorem tax but is a license tax not based upon the value of the property taxed. I have so held for the further reason that it is my opinion that the Legislature intended that only those who pay an ad valorem tax on real and personal property in the district should be permitted to vote, and that the right to vote should be limited to these people, because those voting in a special tax school district election have and do exercise the power to levy a millage on the real and personal property in the district. It is my opinion that the Legislature intended that only those who are required under the law to pay the tax so levied should be permitted to participate in an election where a millage of this nature is voted for. As you know, under the amendment to Article IX of the Constitution, automobiles are no longer subject to an ad valorem tax.

I agree with you that it is a difficult matter for the Supervisor of Registration to prepare a correct list of the qualified electors who pay an ad valorem tax on real and personal property in a special tax school district; however, this is a practical problem which must be solved by those conducting the election.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

ELECTION—PREREQUISITE FOR CALLING

July 13, 1932.

Dear Sir:

This refers to your favor of the 9th instant in which you recite that a permit holder has presented to the County Commissioners petition for election, accompanied by certified copy of permit and \$2,000.00, which sum of money is one-half of the specified cost for the election as fixed by the Commissioners. He leaves this money, application for election and permit on file, and has the presentation thereof made a part of the Minutes of the Board of County Commissioners' meeting, before which he appeared, and requested the County Commissioners that any other applicant for election be considered jointly with his, and election called for his permit and other applicant, and no election has been called.

It is my opinion that this should not change the result. It is further my opinion that this party would have to apply for a new permit and then have the election called under the new permit.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT ELECTIONS—WHO ELIGIBLE TO VOTE

July 13, 1932.

Dear Sir:

The State Superintendent of Public Instruction has referred your letter of July 9 to this office for reply, and, in reply thereto, permit me to say we are enclosing herewith a form letter, which, if you will read carefully, will advise you who are eligible to vote in special tax school district elections.

Only those who are qualified to vote in a special tax school district election, should serve as inspectors and clerks of election.

Relative to the question of who are eligible to serve as trustees of a special tax school district, permit me to say section 719 of the Compiled General Laws, provides that the Board of Public Instruction shall have the names of any persons printed on the ballot as candidates for trustee who have been nominated

by petition of five or more persons qualified to vote in the election. It will be seen from the provisions of the statute as quoted that the law does not prescribe the qualifications of trustees of special tax school districts, however, I am inclined to the view that to be eligible to serve as a trustee a person at the time of his election should have been qualified to vote in the special tax school district election, however, this is a matter to be determined by judicial decision and not by my opinion.

The fact that a husband owns real or personal property and pays a tax thereon, does not make his wife eligible to vote in a special tax school district election, nor does the fact that a wife may own and pay tax on real and personal property make her husband eligible to vote in such election.

Very truly yours,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT—APPLICATION OF LAW IN RE REGISTRATION FOR BOND ELECTION

July 14, 1932.

Dear Doctor:

Replying to your favor of the 11th instant, in which you make inquiry regarding special tax school district elections where bonds are proposed to be issued, permit me to say it is my opinion that such election may be held under the provisions of Chapter 14715, Acts of 1931.

In determining who are qualified electors in the special tax school district election, only freeholders who have paid their poll taxes for the two years next preceding the year in which the election is held, are eligible to vote in such election.

Section 14 of the Chapter above cited defines a freeholder to be a person who has an immediate beneficial ownership interest, legal or equitable, in the title to a fee simple estate in land. In preparing the list of those who are freeholders within the district, I think the only practical thing to do would be to have a list made of those who hold the fee simple title to real estate and who pay the taxes thereon.

Section 3 of the Chapter above cited provides that for elections held under the provisions of said Chapter, electors may be registered as prescribed by the general laws of this State for registration of electors, and such electors shall have the same qualifications for and prerequisites to voting as in elections under the general election law, and in addition thereto they shall submit proof by affidavit before the registration officer that they are freeholders who are qualified electors residing in the district in which the election is to be held.

It appears from these provisions of law that a special registration for the bond election is contemplated.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TRUCKS—WHEN FOR HIRE LICENSE TAG REQUIRED

July 14, 1932.

Dear Sir:

I am in receipt of your letter of the 7th instant, outlining the uses of your trucks, and making inquiry whether the same should carry a private or a for-hire license tag.

Section 1280, Compiled General Laws of 1927, recites that "For Hire" as defined in this Chapter shall include all motor driven vehicles, or trailers hauled by a motor vehicle, in use for transporting persons, commodities, or materials for compensation, or such motor vehicles as may be let or rented to another for a consideration.

Under the above definition and under the recital of uses of your trucks as stated in your letter, I am of the opinion that your trucks should carry a for-hire license tag.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SPECIAL TAX SCHOOL DISTRICT ELECTIONS—IN RE ISSUANCE OF BONDS

July 14, 1932.

Dear Sir:

Replying to yours of the 11th instant, in which you make inquiry regarding special tax school district election for the issuance of bonds, permit me to say Section 14 of Chapter 14715, Acts of 1931, defines a freeholder as follows:

"For the purpose of this Act any person shall be deemed to be a freeholder, who has an immediate beneficial ownership interest, legal or equitable, in the title to a fee simple estate in land."

The fact that a husband owns fee simple title to land and pays taxes therein does not entitle his wife to vote, nor does the fact that a wife owns the fee simple title to land and pays taxes thereon entitle a husband to vote in special tax school district election.

You ask several questions in your letter which have never been presented to and decided by the Supreme Court. Therefore, I do not care to express an opinion thereon, but I think it sufficient to say that in determining and preparing the list of freeholders in a special tax school district election, where bonds are proposed to be issued, only those who hold the fee simple title to real estate and pay the taxes thereon should be listed as freeholders of the district. To go further than this in an effort to determine all of those who might have an immediate beneficial ownership interest, legal or equitable, in the title to a fee simple estate in land lying within the district, would require more time and effort than those conducting the election would feel disposed to give to the matter.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CONSTRUCTION

July 14, 1932.

Gentlemen:

I have your letter of July 11, relative to Chapter 15787, Acts of 1931, under which documentary stamps are required to be placed upon certain instruments.

You will note that under Section 1 of said Act, stamps are required to be placed "On promissory notes, non-negotiable notes, written obligations to pay money, assignment of salaries, wages, or other compensation, made, executed, delivered, sold, transferred or assigned in the State of Florida * * *. Mortgages which incorporate the certificate of indebtedness, not otherwise shown in separate instruments, are subject to the same tax at the same rate."

Under the above statute it appears that when a note and a mortgage reciting the same note are assigned the documentary stamps may be placed on the note, or on its assignment, but not on both the note and the mortgage, but when the mortgage alone is assigned the stamps should be placed on assignment of mortgage.

The above act appears to cover all assignments of the above mentioned instruments, including securities assigned to and deposited with the State Treasurer, under the provisions of Section 6131, Compiled General Laws of 1927.

Very truly yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—APPLICATION OF LAW IN
RE INSTRUMENTS DELIVERED PRIOR TO EFFECTIVE DATE

July 18, 1932.

Dear Sir:

Replying to yours of the 14th instant, in which you make inquiry regarding the Florida Documentary Stamp Tax Act, permit me to say the effective date of said Act was September 24, 1931.

The act is not retroactive as to transactions having taken place prior to the effective date of the Act. But deeds, mortgages, and all other instruments named in the Act, which may have been made prior to the effective date of the Act, but transferred or assigned subsequently would be affected by the provisions of the Act, the same as if the original deed, mortgage, or other instruments had been made after the effective date.

In other words, if the instrument was signed, sealed, and delivered prior to the effective date, such transaction would not require the documentary stamps. But any transfer or assignment of the same instrument after the effective date, would require the documentary stamps.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—CERTIFICATES OF STOCK
SUBJECT TO

July 19, 1932.

Dear Sir:

I am in receipt of your letter of the 12th instant, relating to documentary stamps required under Chapter 15787, Acts of 1931, on certificates of stock issued by corporations.

In reply I beg to say that Chapter 15787, apparently contemplates that the stamp tax on stock shall be on the original issue. It is my opinion that it does not cover a re-issue of stock to the same stockholder to whom the original stock was issued. Of course, the original stock and all stock transfers must be stamped in accordance with the Act.

Yours very truly,

CARY D. LANDIS,
Attorney General.DOCUMENTARY STAMP TAX ACT—SHERIFF'S DEED
SUBJECT TO

July 19, 1932.

Gentlemen:

I am in receipt of your letter of the 12th instant, relative to Chapter 15787, Acts of 1931, and with particular reference to documentary stamps on deeds of a sheriff conveying lands to the successful bidder at an execution sale. I have also noted the citations contained in your letter.

In reply I beg to say that the statute makes no exception with reference to the class of deeds mentioned, and in my opinion they should have attached the documentary stamps required of deeds under the statute.

Yours very truly,

CARY D. LANDIS,
Attorney General.COUNTY BUDGET—APPLICATION OF LAW IN RE ESTIMATES
OF EXPENDITURES

July 20, 1932.

Dear Sir:

I am in receipt of your letter of July 15th, relative to county budgets provided for in Sections 2302 to 2308, Compiled General Laws of 1927, and enclosing copies of letters on the same subject between The Hon. John E. Mathews, attorney, and The Hon. Fred H. Davis, former Attorney General.

In considering this matter I have taken into consideration the above mentioned correspondence and cases cited, among which is the case of *Kirkland vs. State*, 86 Fla. 130, 97 So. 510. One of the counts in that case was for exceeding the estimate of expenses by the county commissioners. The conviction on this as well as another count was sustained by the Supreme Court.

Section 2306 specifically prohibits exceeding estimates of expenses and, also prohibits the payment of estimates under one head out of the estimate for any other expense. This last prohibition, however, would appear to be modified by Section 2304, which provides for transfer of funds under certain restrictions, but such transfer, it seems to me, should only be made when there is a deficit in an item and to the extent of bringing the funds in such item up to the amount estimated.

Section 2306 also provides for reserving in the estimates a reasonable sum for contingencies and emergencies, and the appropriation of any part of said sum for any expense of the county authorized by law. This provision would appear to apply to undesignated items in the nature of contingencies and emergencies and also to designated budget items where deficits exist and an emergency is created or where emergencies arise requiring excess expenditures under such items.

In my opinion the provision of Section 2306 against exceeding estimates of expenditures is definite and binding except as above qualified, and I do not think that such estimate may be exceeded by use of unexpected funds coming into any item by way of reversions from the preceding year or otherwise.

Yours very truly,

CARY D. LANDIS,
Attorney General.

LIQUIDATORS—IN RE PAYMENT NET ASSETS TO
STOCKHOLDERS

July 20, 1932.

Dear Sir:

This refers to your favor of July 14th, relative to the last clause of Section 21 of Chapter 13576, Acts of 1929, Laws of Florida, which is printed on Page 766 of the 1932 Cumulative Supplement to the Compiled General Laws of Florida.

I have discussed this matter with the State Comptroller, and it is my opinion that the clause of the act referred to does contemplate that the net assets shall be paid over by the liquidator to the stockholders in proportion to the stock by them respectively held. The State Comptroller advises me that there has never been but two cases of this kind, and that both of these cases were handled by Dr. Therrell, the liquidator, in Miami. The Comptroller states that the trouble with paying over the assets as this law contemplates, is that these assets are usually not in the form of cash, however, if it can be distributed satisfactorily, I think the Comptroller agrees with me in my opinion that the liquidator shall pay the net assets to the stockholders in proportion to the stock by them respectively held, but I take it that it is a matter very largely of practical solution, rather than what the law actually contemplates. If I can aid or assist you further in this matter, please command me.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

RACING LAW—CONSTRUCTION IN RE ELECTIONS TO BE
CALLED BY COUNTY COMMISSIONERS

July 20, 1932.

My Dear Sir:

This refers to your favor of the 9th instant, relative to the construction of the State Racing law as to elections to be called and held on racing permits. The facts as you present them are, that a permit holder presents to the County Commissioners his petition for an election, accompanied by a certified copy of permit and \$2,000.00, which sum of money is one-half of the specified costs for the election as fixed by the County Commissioners. This money, application and certified copy of permit are on file, and the presentation and payment of the money, etc., is shown by the Minutes of the County Commissioners; but, the petitioner requests the County Commissioners that another applicant be considered jointly with his application, and that an election be called for the two applicants jointly, and if there is more than one other applicant that a pro rata refund of the election costs deposited be made.

The question on these facts which you ask is: Would the County Commissioners have a right to call an election subsequent to the first application that did not embrace the first applicant's permit. Section 6 of Chapter 14832 of the Laws of Florida, among other things provides:

*"The Board of County Commissioners of the county designated shall upon the presentation to said board, at a regular or special meeting, of a written application, accompanied by a certified copy of the permit granted, * * * shall order an election, etc."*

"All elections ordered under this act shall be held within ninety days and not less than sixty days from the time of presenting such application to said County Commissioners."

"The applicant shall upon presentation to the County Commissioners of the application heretofore mentioned, pay to the County Commissioners of the county in which election shall be held, an amount of money to pay all expenditures in connection with the holding of election mentioned herein."

I am of the opinion that the statutory duty of the County Commissioners is mandatory. That at the general or special meeting when the petition and papers are presented, an order shall be issued calling an election within the statutory time, and that sufficient money to cover all expenses of election must at that time be deposited. I find nothing in the racing law authorizing or permitting a conditional or contingent application, such as the facts above stated show your client's application to be, and hence I reach the conclusion that the assumed facts do not show such a compliance with the laws as would justify the calling of an election thereon, or as would prevent the County Commissioners from subsequently calling an election on a

petition that did fully comply with the law in all respects, including deposit of money to cover cost of election, and if such subsequent election were called, I do not think the prior applicant would, under the law, be required to be included in the election so subsequently called.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

SHIPPING—PILOTAGE RATES

July 20, 1932.

Dear Sir:

I have your letter of July 12, with reference to pilotage rates.

In reply, I beg to say that upon consideration of the Federal Statutes with reference to shipping, I do not find anything in the United States Code Annotated that would prohibit charging a less rate for vessels not required to use port pilots than the regular rates provided for compulsory pilotage.

Very truly yours,

CARY D. LANDIS,
Attorney General.

TAX COLLECTORS—COMMISSIONS FOR COLLECTING GENERAL SCHOOL TAXES SHOULD BE PAID FROM GENERAL SCHOOL FUND

July 22, 1932.

Dear Sir:

I am in receipt of July 20 making inquiry whether the Board of Public Instruction would be authorized to pay the Tax Collector his commission for collection of General School Funds.

The Honorable Fred H. Davis, former Attorney General, in a letter, under date of August 11, 1930, addressed to Honorable L. V. Trueman, attorney of Milton, Florida, on the subject of payment of commissions to Tax Collectors for collecting General School taxes, referred to the case of Coppedge versus Bowden, 99 Fla. 358, 127 So. 319, and expressed his opinion in the following language:

"My understanding of the last mentioned case and the opinion rendered is that these commissions are payable out of the funds collected and cannot be paid out of the General County Funds."

In another letter by former Attorney General Davis, under date of April 17, 1930, addressed to the several tax collectors of the State of Florida on the same subject, Judge Davis referred to the above mentioned case

of Coppedge versus Bowden and states that the opinion written by Judge Whitfield "holds that under Section 1033 of the Compiled General Laws, tax collectors are entitled to their commissions for the collection of school taxes, out of the school taxes which are collected."

In my opinion the above mentioned case of Coppedge versus Bowden does not conclusively determine that the Tax Collectors should be paid from the General School fund for collection of General School taxes. However, I think that the interpretation of this case by the former Attorney General is a fair and reasonable deduction from the body of the opinion as well as the headnotes.

In view of the premises and in consideration of the ruling and policy having been standing for more than two years, I do not think that the same should be disturbed without a court decision to the contrary.

Accordingly, I beg to say that in my opinion tax collectors should be paid from the General School Fund for collection of general school taxes.

Very truly yours,

CARY D. LANDIS,
Attorney General.

CANDIDATE—COUNTY COMMISSIONER NOT AUTHORIZED TO
PLACE NAME ON GENERAL ELECTION BALLOT UNLESS
NOMINATED IN PRIMARY

July 23, 1932.

Dear Sir:

Replying to yours of July 21, permit me to say under the provisions of Chapter 14657, Acts of 1931, the County Commissioners cannot place the name of any person on the General Election ballot as a candidate for State or county office, unless such person was nominated in a Democratic or Republican Primary Election. If the Democratic or Republican parties fail to furnish a nominee for an office, both parties waive or forfeit their right to have a nominee's name printed on the General Election ballot.

The only instance where the Democratic Executive Committee or the Republican Committee can nominate a candidate for a State or county office is where the nominee, between the Primary and General Election, dies or is disqualified for some other reason.

If an individual wishes to run for an office and depended upon the electors to write his name on the General Election ballot, there is nothing to prevent him doing so. It is not necessary for such person to do anything other than to solicit voters to write his name in on the General Election ballot.

Very truly yours,

CARY D. LANDIS,
Attorney General.

SCHOOL TRUSTEES—ELIGIBLE TO SERVE AS COUNTY COMMISSIONERS

July 23, 1932.

Dear Sir:

I am in receipt of your letter of July 22 with reference to a school trustee serving as a member of the Board of County Commissioners.

Section 15 of Article 16 of the State Constitution prohibits any person from holding or performing the functions of more than one office under the government of this State at the same time, provided county school officers, and other designated officers, may be elected or appointed to fill any legislative, executive or judicial office.

School district trustees provided for under Section 10 Article 12 of the State Constitution, may, in my opinion, be considered "county school officers" as mentioned in Section 15 of Article 16, and under the proviso of that provision of the Constitution, would be eligible to serve on the Board of County Commissioners.

Very truly yours,

CARY D. LANDIS,
Attorney General.

ALCOHOL, LIQUORS, WINES—WHEN SALE AUTHORIZED

July 23, 1932.

Dear Sir:

Replying to your favor of the 1st instant, which has been referred back to this office by Mr. O. D. Jackson, Supervisor of Permits at New Orleans, permit me to say that Section 7605 of the Compiled General Laws appears to authorize licensed druggists to keep for sale and to sell alcohol for medicinal, scientific and mechanical purposes, and keep for sale and sell wines for sacramental purposes by religious bodies, or any duly authorized secret organization using wines for sacramental purposes.

Under the statutes alcohol for medicinal purposes must be sold only upon prescription of a licensed physician. Section 7607 of the Compiled General Laws authorizes a licensed druggist to sell wines to regularly ordained ministers or priests who are in charge as pastor of a church, or to any duly organized secret organization using wines for sacramental purposes. Section 7612 of the Compiled General Laws provides that hospitals and sanitariums having a Federal permit may have and possess liquors for medicinal purposes, and may with the approval of the State Health Officer by permit given in writing be allowed to have such reasonable quantity of medicinal liquors and wines as the said Health Officer may determine.

Your inquiry is whether or not hospitals, sanitariums, clinics, etc., must employ a regularly licensed druggist or pharmacist as a prerequisite to the right to use this alcohol. You will observe from the provisions of Section

7612, as above set forth, that there is no provision therein requiring hospitals and sanitariums having a Federal permit to have the services of a licensed druggist or pharmacist as a prerequisite to the use by sanitariums and hospitals of liquors and wines, therefore, such institutions are not required to have druggists or pharmacists employed as a prerequisite to the right to use medicinal liquors and wines.

Very respectfully,

CARY D. LANDIS,
Attorney General.

GASOLINE—WHEN NOT SUBJECT TO SALES OR STORAGE TAX

July 26, 1932.

My Dear Sir:

This refers to your favor of July 15.

The facts set up, upon which you request an opinion from this office, as I understand them, are as follows:

The Pan-American Airways, Inc., purchases from the Standard Oil Company of Kentucky at its refinery at Baton Rouge, Louisiana, gasoline, which gasoline is commingled with other like gasoline of the Standard Oil Company and this commingled bulk of gasoline is transported in its commingled state from Baton Rouge, Louisiana, to Jacksonville, Florida. At Jacksonville, Florida, the amount of gasoline purchased by the Pan-American Airways, Inc., will be pumped from the commingled bulk of gasoline into separate tank cars, and in such cars transported to Miami, Florida, and there pumped into tanks of the Pan-American Airways, Inc., to be used exclusively by the Pan-American Airways, Inc., in its foreign air commerce between Miami, Florida, and Latin-American countries.

The question then propounded on these facts is whether or not this gasoline so purchased by the Pan-American Airways, Inc., is subject to either the gasoline sales tax or the gasoline storage tax of the State of Florida.

Upon reviewing the authorities I find that the weight of modern authority seems to be that a sale of a definite quantity of commingled goods or property, without actual segregation at the time of sale, is, nevertheless, a definite concluded transaction.

It is my opinion that upon the facts above stated, and in the light of the various decisions of the Courts at this time, that the gasoline so handled is not subject to either the gasoline sales tax or the gasoline storage tax of the State of Florida.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

JUVENILE COURT—DUTY OF COUNTY COMMISSIONERS TO FIX
COMPENSATION OF JUDGE

July 26th, 1932.

My Dear Sir:

Section 3685 of the Compiled General Laws of Florida, 1927, provides that:

"It shall be the duty of the county judge to exercise such supervision or control of the dependent and delinquent children as provided for in this chapter, etc."

Section 3710 of the Compiled General Laws, 1927, among other things provides:

"The county judge shall be paid such compensation as may be fixed by the County Commissioners, etc." (Referring to the county judge's salary as Juvenile Court Judge).

In the case of your county, if I understand the facts correctly, the County Commissioners did fix the salary of the judge of the Juvenile Court at \$25.00 per month, beginning December 1st, 1925, and the county judge was accordingly paid from time to time this amount of money.

It appears that the County Commissioners on February 4th, 1930, as is disclosed by their Minutes in Minutes Book No. 1, Pages 275 and 276, undertook, and did strike from the salaries allowable by them the salary of \$25.00 per month allowable to the county judge as Juvenile Court Judge. This minute is more or less indefinite, but I assume that this was what was intended by the County Commissioners.

Then it appears that a bill was rendered by the county judge in April, 1931, for the sum of \$25.00, which was approved and paid by the County Commissioners.

This payment might constitute a waiver of the former rescision of the salary of the Juvenile Court Judge, or it might not. This is a question of fact that will have to be determined by the Courts, if it cannot be settled in some other way. I am clearly of the opinion that there is a duty resting upon the County Commissioners to fix the salary or compensation of the county judge as Juvenile Court Judge, and if the County Commissioners of your county by their action on February 4th, 1930, meant to abolish from then on the salary of \$25.00 per month to the Juvenile Court Judge, as had been theretofore fixed, then it was unquestionably the duty of the County Commissioners at the same time to have fixed a compensation to be allowed to the Juvenile Court Judge. They apparently did not do this but, in my opinion, this is a duty that could be enforced by a writ of mandamus. That is, they could be compelled by such writ to fix a salary, but the amount of such salary as compensation to such Juvenile Court Judge is a matter within their discretion.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

PILOTAGE RATES—LAW DESIGNATES

July 27, 1932.

Dear Sir:

Replying to yours of the 25th instant, permit me to say Section 3880, Compiled General Laws of Florida, fixes the rate of pilotage for the ports of Florida. It reads as follows:

"The Board of Pilot Commissioners of each port may fix the rate of pilotage which shall be paid by any vessel entering their port; but in no case shall they fix the rates greater than the rates now provided by law, as follows: All steamers or vessels entering any port or leaving the same, shall be subject to pay to any licensed pilot performing duty on board, or to the pilot who shall first speak to such steamer or vessel, the following rates of pilotage: For steamers or vessels drawing six feet or less than the same, two dollars per foot; for steamers or vessels drawing from six to ten feet, three dollars per foot; for steamers or vessels drawing from ten to fourteen feet, four dollars per foot; for steamers or vessels drawing from fourteen to twenty feet, five dollars per foot; for steamers or vessels drawing over twenty feet, six dollars per foot. These rates shall apply to all steamers or vessels, whether owned wholly by citizens of this State or not; provided, *that all steamers or vessels carrying the regular United States mails shall pay half pilotage only*; provided, further, that all steamers or vessels drawing less than six feet of water, and having a coastwise license, shall be exempt from paying whole or half pilotage, unless they employ a pilot."

Section 23 of said chapter reads as follows:

You will see from these provisions that the laws of Florida fix the rates which pilots at the ports of Florida may charge. Therefore, it is my opinion that the sections of the Federal statutes have no bearing upon the subject except insofar as the same may conflict with the provisions of the statute above quoted.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX CERTIFICATE—APPLICATION OF STATUTE IN RE
FORECLOSURE PROCEEDINGS

July 27, 1932.

Dear Sir:

Replying to your favor of the 25th instant, in which you ask whether or not, where foreclosure proceedings are instituted to foreclose on a tax certificate or tax deed, those in possession may be ousted from the property, permit me to say Section 21 of Chapter 14572, Acts of 1929, reads as follows:

"Tax certificates upon which action shall have been commenced may be redeemed before sale under final decree by paying to the Clerk of the Circuit Court the full amount due thereon, including all omitted subsequent taxes and subsequent tax sale certificates with interest, fees and costs, and in such event the action shall be dismissed and the tax certificate or certificates cancelled, and the Clerk shall make distribution of the money according to law."

Section 22 of the same chapter reads as follows:

"If the Court shall determine that any tax sale certificate, tax deed, or portion thereof, is illegal, the Court shall enter a decree for such taxes or portion thereof as may be due and unpaid, with penalty, interest, and cost, and in such case shall make such orders as to costs and attorneys' fees as shall appear to be reasonable and just."

Section 23 of said chapter reads as follows:

"The final decree in any such action shall determine the amount due on the tax certificate or deed and omitted subsequent taxes sale certificates, including a reasonable attorney's fee and costs, and the property designated in the certificate shall be ordered sold and shall be sold to satisfy the decree in the same manner as in the foreclosure of mortgages on real estate, and such decree shall have the force and effect of a decree foreclosing a mortgage on real estate."

You will see from the provisions of Section 23 as quoted here that the parties in possession claiming title to the property cannot be dispossessed until final decree has been entered ordering the property sold, and until the property has been sold to satisfy the decree in the same manner as in the foreclosure of mortgages.

Yours very truly,

CARY D. LANDIS,
Attorney General.

MOVING PICTURES—APPLICATION OF LAW IN RE LICENSE TAX

July 27, 1932.

Dear Sir:

Replying to yours of the 21st instant, permit me to say Section 3577, Compiled General Laws of Florida, provides that any person now or hereafter engaging or working at the business of operating or assisting in the operation of any moving picture machine in any city in this State, shall be required to obtain a license.

Section 3579 requires that all applications for license be accompanied by a fee of \$1, and that each applicant shall at any time and place that the

Board shall designate be required to pass an examination as to his qualifications as said board may direct.

Section 3580 provides that a license issued shall be good for one year from the date of the issuance.

Section 3581 provides that all moving picture machines shall be under the care and supervision of one person holding an operator's license, who shall be responsible for the proper handling of the machine.

The statutes above quoted were enacted primarily to apply to moving picture shows operated for pay. You do not state in your letter whether or not there will be any charge made for admission to the show which you propose to put on in this State. If yours is merely an advertising project, as your letter seems to indicate, I do not know that there would be a disposition on the part of the officers to compel you to comply with the statutes cited.

In the cities and towns where your picture is run in a regular picture show by the regularly employed operator, you would, of course, have no difficulty. In the smaller places where you propose to run the show yourself, it might be necessary for you to employ a licensed operator.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DRINKS—WHEN SALE PROHIBITED

July 28, 1932.

Dear Sir:

Replying to yours of the 25th instant, permit me to say Section 7613, Compiled General Laws, reads as follows:

"All drinks, beverages, or alcoholic liquors for beverage purposes containing one-half of one per cent of alcohol, or more, by volume, at sixty degrees Fahrenheit, and all intoxicating liquors and beverages, whether spiritous, vinous, or malt, shall be deemed and held to be within the prohibitions of this article."

Therefore, it will be seen that the sale of all drinks for beverage purposes, containing one-half of one per cent or more, of alcohol, whether spiritous, vinous, or malt, are prohibited in this State.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INHERITANCE TAX—APPLICATION OF STATUTE IN RE
AMOUNT TAXABLE

July 29, 1932.

Gentlemen:

I am in receipt of your letter of the 25th instant, with reference to the inheritance tax statutes of this State.

You state that a decedent non-resident of Florida owned real estate in Florida worth \$900,000.00, while the remainder of his estate, \$100,000.00 in securities, was taxable by New York, the State of resident, and you make the following query:

"Can the administration expenses of the entire estate and all debts be charged against the Florida estate for purposes of the Florida inheritance and estate tax?"

In reply I beg to call your attention to the following provisions in Section 3 of Chapter 14739 of 1931:

"For the purpose of the tax provided for by this act the value of the net estate shall be determined—

(b) In the case of a non-resident, by deducting from the value of that part of his gross estate, which at the time of his death is situated in the State of Florida.

(1) That *proportion* of the deduction specified in paragraph (1) of Subdivision (a) of this Subdivision of this section, *which the value of such part bears to the value of his entire gross estate, wherever situated.*"

The paragraph referred to immediately above recites amounts "for funeral expenses, administration expenses, claims against the estate," etc.

In my opinion the above quoted statutes answer your query in the negative.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—REFUND OF EXCESSIVE
AMOUNTS PAID NOT AUTHORIZED EXCEPT BY
LEGISLATIVE ACT

July 30, 1932.

Dear Sir:

This refers to your favor of July 29th, in which you state that several deeds have been properly executed and delivered, and each through error, carried excessive State documentary stamps. That these stamps have been duly cancelled, the deeds recorded, etc.

The question you raise is whether or not a refund can be made of the excess. Chapter 15787, Acts of 1931, which is the State Documentary

Stamp Act, in Section 6, provides that all taxes collected under the provisions of this act shall be paid tin to the State Treasury to the credit of the General Revenue Fund of the State of Florida to be used and expended for the purposes for which said General Revenue Fund was created and exists by law. This money having been paid and gone into the State Treasury, it is my opinion that Section 4 of Article IX of the Constitution is applicable. This section is as follows:

"Section 4. No money shall be drawn from the Treasury except in pursuance of appropriation made by law."

It is my opinion that there is no method by which this money can be refunded, except, of course, by appropriation made through legislative act.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

TRUCKS—REFUND OF LICENSE TAX NOT AUTHORIZED

August 2, 1932.

Gentlemen:

This refers to your favor of the 1st instant, in which you say that because of a recent decision of the Supreme Court of Florida you would be unable to use some of your trucks on which you had heretofore procured licenses, and that you desired to know if the unearned portion, as you put it, cannot now be returned to you.

In reply I would state that I know of no law that would authorize the return of any portion of this license tax. Under the motor vehicle law, all money collected for licenses are paid over to the State Treasurer, and when money once gets into the treasury, it is then controlled by Article IX, Section 4 of our State Constitution, which provides:

"No money shall be drawn from the treasury except in pursuance of appropriations made by law."

It is my opinion that there is no law that would authorize the refund, and that the only body that would have the power and authority to make such refund would be the State Legislature, in the event it saw fit to make an appropriation for such purpose.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAXATION—IF CITY AUTHORIZED TO CHANGE ASSESSED
VALUATION OF CERTAIN PROPERTY

August 6, 1932.

Dear Madam:

I am in receipt of your letter of the 2nd instant, advising that a number of people have let their property sell for taxes and that the city bid in and now holds the tax certificates, and the owners have subsequently improved the property. You make inquiry if the city has the right to change the assessed valuation on such property from unimproved to improved valuation.

In reply I call your attention to Section 984, Compiled General Laws of 1927, which provides that Tax Assessors shall enter on their rolls lands sold for taxes, and shall enter their valuations of the same on the rolls, but the taxes are not to be extended. The assessor is the judge of what valuation shall be entered in such cases. This is the law that applies to State and county taxation and to municipalities, unless otherwise controlled by special charters or acts.

In this connection I must call your attention to the limitation with reference to municipalities contained in Section 3001, Compiled General Laws of 1927, which provides that municipalities may make their own assessments of property for taxation, but the valuation of property by the municipality shall not exceed the last valuation thereof by the State for taxation.

The above observations are based on the general laws. This office is not authorized and does not have sufficient office force to investigate and advise with reference to special charters or acts governing the many towns and cities of the State.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CALVES—IN RE MARKS AND SALE OF

August 10, 1932.

Dear Sir:

Your letter of the 1st instant, addressed to the Honorable Doyle E. Carlton, Governor, has been referred to this office for reply. You make inquiry whether or not it is against the law to kill and sell calves freshly marked without a bill of sale or first being recorded before sale.

Section 6961, Compiled General Laws of 1927, provides for inspectors to inspect marks and brands of beef and hogs slaughtered and offered for sale, and keep a record of such marks and brands and note and record in his book whether or not such marks and brands appear to have been altered, changed, mutilated or disturbed from a previous mark or brand, and if so, to ascertain original mark or brand.

Section 7287 makes it unlawful to kill beef, calves, and other animals without inspection except by owner in presence of one or more disinterested persons.

Section 7288 provides punishment for one offering for sale any slaughtered beef or hogs without exhibiting and subjecting to inspection the hides containing the unmutilated ears of each and every beef, and the head with the unmutilated ears of each and every hog so offered for sale, or who shall mutilate such ear or ears before inspection.

I also refer you to Chapter 14740, Acts of 1931, as to additional duties of inspectors.

The above is given you as the general laws of the State. This office is not authorized and does not have sufficient office force to investigate and advise as to the many special laws on the statute books.

Freshly marked ears of calves or other animals may or may not be a mutilation, depending on whether the animals had been previously marked.

Yours very truly,

CARY D. LANDIS,
Attorney General.

INHERITANCE TAXES—ADMINISTRATION EXPENSE CANNOT BE CHARGED AGAINST FLORIDA ESTATE

August 12, 1932.

Gentlemen:

I am in receipt of your letter of the 5th instant, relative to the inheritance tax act, Chapter 14739, Acts of 1931. You make the following inquiry:

"The decedent, a resident of Florida, owned real estate in Florida worth \$900,000, owned stocks and bonds worth \$100,000, which stocks and bonds were not physically located in Florida, and owned \$100,000 in real estate and tangible personal property located in other states. Can the administration expenses of the entire estate and all debts be charged against the Florida estate for purposes of the Florida Inheritance Tax?"

Before considering the statute your attention is called to headnote 2 of the case of First National Bank of Boston vs. State of Maine, decided by the United States Supreme Court and reported in 76 L. Ed. 211, reading as follows:

"Real property and tangible personal property cannot be taxed, or made the basis of an inheritance tax, except by the State in which it is located."

Under the above court decision it appears that the value of real property and tangible personal property in another State cannot be included

for inheritance tax purposes in the value of the gross estate of a decedent resident of Florida, notwithstanding the provisions of Section 3 of Chapter 14739, that the value of the gross estate of the decedent shall be determined by including the value of all property, real or personal, tangible or intangible, wherever situated.

Subdivision (a) of division 2 of Section 3 of said Chapter 14739 provides that the value of the *net* estate of a resident shall be determined by deducting from the value of the *gross* estate "administration expenses, claims against the estate," etc., which apparently covers all administration expenses and debts.

It seems reasonable, however, to assume that this last mentioned provision was enacted in contemplation of the prior provision of the statute that the value of the *gross* estate should include property in other states than Florida, and it seems reasonable to assume further that the Legislature did not intend to impose the full burden of administration expenses and debts solely upon property in Florida, when the decedent owned property out of the State not subject to the inheritance tax.

Since the prior provision is rendered ineffective by the United States Supreme Court decision, it would appear also to be contrary to equity and justice for the Florida property to bear the full reduction for administration expenses and debts when there is property in other States that should in all fairness bear its proportionate part of such burdens.

This view is supported by the provisions of sub-division (b) of division 2 of Section 3 of said chapter, which provides for a proportionate division of such deductions for administration expenses and claims in the case of non-resident decedents owning property, both in and out of this State.

This office has not been called upon for an official opinion on the subject of your inquiry, and I do not know what the courts would hold with reference thereto, but in view of the above it seems to me that your inquiry should be answered in the negative.

Yours very truly,

CARY D. LANDIS,
Attorney General.

SCHOOL BUILDINGS—BOARD PUBLIC INSTRUCTION MAY
EMPLOY JANITOR

August 15, 1932.

Dear Sir:

I am in receipt of your letter of August 11, making inquiry with reference to employment of janitors for school buildings in special tax school districts. Your first inquiry is whether the authority for such employment is vested in the Board of Public Instruction or in the district trustees. Your second inquiry is whether under Section 16, Compiled General Laws, the

Board of Public Instruction can employ a trustee of a Special Tax School District as a janitor for the school buildings in that district at a monetary consideration.

In reply, I beg to say that Section 15 of Article 16 of the State Constitution prohibiting persons from holding more than one office under the Government of this State at one time does not apply for the reason that school officers are specifically excepted from the provisions of the Constitution; and for the further reason that the position of janitor of a school is an employment and not an office.

The employment of a janitor appears to be a function of the Board of Public Instruction and not of the trustees of a Special Tax School District. Paragraph 5 of Section 561 enumerates among the duties of the Board of Public Instruction the following:

"To do whatever is necessary with regard to purchasing or renting school sites and premises, constructing, repairing, furnishing, warming, ventilating, keeping in order or improving the school houses, etc."

Section 709, Compiled General Laws of 1927, provides that the powers of trustees shall not be those of control but of supervision only. Section 710 provides that all public schools conducted in a Special Tax School District shall be under the direction and control of the County Board of Public Instruction and County Superintendent, as any other district, etc.

In consideration of these statutes, and in view of the fact that I have been unable to find any statutory authority for trustees of special tax School Districts to employ janitors for schools in such districts, it is my opinion that such employment rests with the Board of Public Instruction and not with the trustees.

The provisions of Section 716, Compiled General Laws of 1927, that the trustees shall make no contract with any of its members embracing any monetary consideration, would have no application with reference to employment by the Board of Public Instruction of one of such trustees for the position of janitor, and I know of no statutory prohibition against the employment by the Board of Public Instruction of a trustee of a Special Tax School District in the position of janitor for a school in such district.

Very truly yours,

CARY D. LANDIS,
Attorney General.

VOTERS—PUBLICATION OF LIST REQUIRED

August 24, 1932.

Gentlemen:

I am in receipt of your letter of August 13, relative to publication of list of voters by the Supervisor of Registration under Section 284, Compiled General Laws of 1927.

You state that the Supervisor has no funds available and inquire if failure to publish would invalidate the election.

Section 284 appears to be mandatory and I advise that publication be made, even if it is necessary to make transfer of funds under the statutes to take care of same. In view of the importance of the General Election in November and the fact that irregularities in the conduct and holding of the election may lead to controversy and litigation, also because this a a presidential year and there are congressmen to be elected and irregularities might occasion a Federal controversy, I do not think that the validity of the election should be put in jeopardy by omitting to comply with this statutory requirement.

Very truly yours,

CARY D. LANDIS,
Attorney General.

BAIL BONDS—DOCUMENTARY STAMPS REQUIRED

August 26, 1932.

Dear Sir:

Replying to yours of August 20, permit me to say it is my opinion that under the provisions of Chapter 15787, Acts of 1931, documentary stamps should be placed upon bail bonds executed in the criminal proceedings in the Federal court, just the same as they should be placed upon bail bonds in such proceedings in State courts.

If the bail bonds were instruments issued by the Government, they would be exempted, but, of course, as you know, they are not instruments issued by the Government.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMPS—EXTENSION OF MORTGAGE ON Y. M. C. A. PROPERTY LIABLE

August 30, 1932.

Gentlemen:

This refers to your favor of the 27th instant, relative to the requirement of documentary stamps upon extension of a mortgage held by the Florida National Bank on Y. M. C. A. property.

You state that this extension agreement provides only for the terms and conditions of the mortgage and the maturity of the mortgage note are extended for one year. Therefore, in my opinion, this is a renewal to that extent, and under the specific terms of the Stamp Tax Act, Chapter 15787, Acts of 1931, it will be necessary that documentary stamps in the proper amount be attached. I note that the bank would be glad to assist this

charitable organization, and I would likewise like to do so, but it is my duty to interpret the law as I find it, and in my opinion there is no question as to the liability of this extension for the proper amount of documentary stamps.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

PURCHASING DEPARTMENT—IN RE TAX EXEMPTION ON
GASOLINE AND OILS PURCHASED FOR BOARD OF
COMMISSIONERS STATE INSTITUTIONS

September 2, 1932.

Gentlemen:

This refers to your favor of August 26th, with which you enclose copy of a resolution passed by the Board of Commissioners of State Institutions. This original resolution included the State Forestry Board, however, upon further investigation it was decided by this office that the State Forestry Board was not exempt from the State and Federal tax on gasoline, and the Honorable T. Ed Bryan, manager of the Purchasing Department, has, or will, notify the various oil companies and persons interested. All other boards, bureaus, etc., named in the resolution, to-wit:

The Commissioner of Agriculture,
State Geological Board,
State Marketing Bureau,
State Shell Fish Commissioner,
State Game and Fresh Water Fish Commissioner,
State Hotel Commissioner,
State Board of Health,
State Live-Stock Sanitary Board, and
State Welfare Board,

are exempt from the State and Federal tax on gasoline.

The procedure suggested by the Manager of the Purchasing Department in handling this situation may seem a little awkward in the light of opinion heretofore rendered by this office as to liability for the tax, yet after considerable correspondence and the handling of this situation between the manager of the Purchasing Department and the various oil companies it was found that the present method of handling it was the most practical and workable scheme that could be devised, and I see no objection to handling it in the way it is being handled.

With reference to whether or not you are protected in dealing with the Honorable T. Ed Bryan, Manager of the Purchasing Department of the Board of Commissioners of State Institutions, I beg to advise that he has been, by proper resolution designated as the executive officer of the board

to handle these affairs and is fully authorized and there is no need of your looking toward any arrangement with any other official of the Board of Commissioners of State Institutions.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CITIZENSHIP—STATE OF FLORIDA

September 9, 1932.

Dear Sir:

I have been requested by the Secretary of State to advise you regarding citizenship in the State of Florida.

Permit me to say this is a matter largely governed by the individual intent of the person. To be a qualified elector of the State of Florida, it is necessary to have resided in the State one year and in some particular county in the state for six months prior to the day of the election.

To become a bona fide resident of the State of Florida, it would be necessary for a person to have some definitely designated and declared place of residence in this State. A person has a right to select his permanent place of residence, and the question of whether or not he is a bona fide resident of the State of Florida would depend upon the question of whether or not the particular person claiming this State as his permanent place of residence had in good faith selected a place of permanent residence in the State and had definitely designated and declared publicly to those who might make inquiry that he is a bona fide resident of the State of Florida.

Of course, you understand that the person could not very well make such claim in good faith unless the person spent some of his time at his place of residence in this State.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

GOVERNOR—DUTY IN RE SUSPENDING CERTAIN OFFICERS

September 9, 1932.

Dear Sir:

Replying to your favor of September 2nd, permit me to say Section 15 of Article IV of the Constitution of the State of Florida authorized the Governor to suspend from office such officers that have been appointed or elected, who are not subject to impeachment for malfeasance or misfeasance, or for other causes.

Neither the organic or statutory law of this State requires the Governor to furnish the suspended officer a bill of particulars. It is sufficient if the

order of suspension contains one or more of the causes named in Section 15 of Article IV of the Constitution and the suspended officer is given notice thereof.

It appears to be the duty of the Governor to notify the suspended officer the cause of suspension and give him a hearing if the officer requests it, and to reinstate him if the evidence in the Governor's opinion does not sustain the charges, but it is not the duty of the Governor to recite in his order of suspension the specific acts of commission or omission constituting the cause of suspension.

It is my opinion that the order of suspension issued by the Governor suspending Fred Pine as solicitor of the Criminal Court of Record of Dade County, meets all organic and statutory requirements.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

TAXATION—IF MOVING PICTURE INDUSTRY EXEMPT

September 9, 1932.

Dear Sir:

Complying with your request of September 7th, in which you request my opinion on the question of whether or not the amendment known as Section 12 of Article IX of the Constitution of the State of Florida is broad enough to include the moving picture industry, permit me to say the amendment reads as follows:

"For a period of fifteen years from the beginning of operation, all industrial plants which shall be established in this State on or after July 1st, 1929, engaged primarily during said period in the manufacture of steel vessels, automobile tires, fabrics and textiles, wood pulp, paper, paper bags, fiber board, automobiles, automobile parts, aircraft, aircraft parts, Glass and Crockery Manufacturers and the refining of sugar and oils, and including by-products or derivatives incident to the manufacture of any of the above products, shall be exempt from all taxation, except that no exemption which shall become effective by virtue of this amendment shall extend beyond the year 1948.

"The exemption herein authorized shall not apply to real estate owned and used by such industrial plants except the real estate occupied as the location required to house such industrial plants and the buildings and property situated thereon, together with such shipping facilities and being used for such purposes."

It will be noted that the exemption extended to industrial plants engaged in the manufacture of textiles among other things mentioned. Textiles as defined by Webster's Dictionary includes cotton. I am under the impression

that moving picture films are manufactured from celluloid, which is a cotton composition.

If I am correct in my assumption regarding the material from which moving picture films are manufactured, it is my opinion that the moving picture industry would be exempted under the provision of the amendment exempting manufacturers of fabrics and textiles. Of course, if the chief ingredient of moving picture films is not cotton or some other textile material or unless it is a composition of several textile materials that make up the chief ingredient in moving picture films, the industry would not come within the exemption.

Very truly yours,

CARY D. LANDIS,
Attorney General.

CANDIDATES—MANNER OF NOMINATING AND ELECTING

September 10, 1932.

Dear Sir:

Replying to yours of September 6th, permit me to say where the Republican or Democrat Parties, both of which are required under the laws of Florida to nominate their candidates in a primary election, fail to nominate candidates in that manner, they forfeit their right to provide a candidate.

The General Election ballot has a blank line under each office to be voted for and the electors may write in the name of a candidate and place a cross mark to the left of said name and in that manner elect a person to office.

Very truly yours,

CARY D. LANDIS,
Attorney General.

BONDS—1931 LAW DOES NOT INCLUDE FEDERAL LAND BANK SYSTEM

September 13, 1932.

Dear Sir:

This refers to your favor of the 12th instant, in which you request my unofficial opinion as to whether or not Chapter 1504, Sub-Section C of the General Acts of 1931 would include bonds issued by the Federal Land Bank system as securities legal for investments for trust funds in this State.

In reply I would state that it is my opinion that Sub-Section C referred to does not include bonds issued by the Federal Land Bank system. You will note that Sub-Section C includes stocks or bonds, notes or obligations

of the United States, or those for which the faith of the United States is pledged to provide for the payment of the interest and principal. It is my understanding that Federal Land Bank bonds are not obligations of the United States Government nor are they protected by a pledge of the faith of the United States to provide for the payment of the interest and principal.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

GASOLINE TAX—MILITARY DEPARTMENT EXEMPT

September 14, 1932.

Dear Sir:

Replying to yours of September 7th, addressed to the Hon. T. Ed. Bryan, Purchasing Agent of the State of Florida, which has been referred to this office for reply, permit me to say it is my opinion that the military department of the State of Florida should be exempt from both the State and Federal tax on gasoline used in government owned motor vehicles and used for government purposes. Deliveries should be made to the military department of the State of Florida by you tax free.

Very truly yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—BANKRUPT ESTATE REQUIRED TO ATTACH TO DEEDS OF ASSIGNMENT

September 14, 1932.

Dear Sir:

Replying to yours of September 10th, in which you ask to be advised whether or not a receiver or trustee in bankruptcy in the United States District Court, when selling real estate to the bankrupt estate are required to attach documentary stamp to deeds assigning all mortgages and other instruments, permit me to say that stamps should be placed on said instrument.

Very truly yours,

CARY D. LANDIS,
Attorney General.

CANDIDATE—IN RE FILING CAMPAIGN STATEMENT

September 13, 1932.

Dear Sir:

Replying to yours of September 10th, permit me to say where a candidate for constable fails to file his last campaign statement within the time prescribed by law for filing such statement and he did not do so wilfully

and continuously, I do not think such candidate should be held to be disqualified as such.

If the candidate wilfully and continuously failed to file such statement and the Clerk of the Circuit Court certifies such fact to the Board of County Commissioners, the name of such candidate cannot be printed upon the general election ballot.

Very truly yours,

CARY D. LANDIS,
Attorney General.

CHILDREN—NOT PERMITTED TO ENGAGE IN CERTAIN
EMPLOYMENT

September 21, 1932.

Dear Sir:

This refers to your favor of September 8th, in which you request my opinion upon a certain state of facts which, as I understand it is as follows:

"That for some months past several dancing schools and academies of Miami have sought and received from theatres operated by others in that community the permission of furnishing exhibition dancing programs involving children under fourteen years of age. These programs have been somewhat casual and irregular and were furnished without compensation in money to either the dancing school or the children appearing in the dancing act. The children are accompanied by their dancing instructors and in most instances by the parent, all of whom are backstage and look after the children dressing in costume and the direction of the act from the wings of the stage. These acts, as I understand it, are a part of the regular program of the Theatre for which an admission is charged and these dancing acts are advertised as a part of the regular program on the particular evening in question. The question confronting you is, whether or not these children, being under the age of fourteen years, fall within the prohibition of the terms of Section 5943, Compiled General Laws of Florida—Revised Statutes of 1920, Section 4020. Section 5943 of the Compiled General Laws, above referred to, reads as follows:

"5943. (4020) Child Under Fourteen Not Permitted To Engage In Certain Employment.—No child under fourteen years of age shall be employed, permitted or suffered to work in, about or in connection with any mill, factory, workshop, mechanical establishment, laundry, or on the stage of any theatre."

This section above quoted is Section 3 of Chapter 6488, Acts of 1918, which chapter was meant to cover the field of prohibition under certain ages in the employment of children. Our own Supreme Court, it seems, has never construed this statute. In answering the question now before us, it seems to me necessary to consider other Sections of this same act with a view of determining what the Legislative intention was at the time of the enactment of this law. Section 5942, Compiled General Laws, or Section

4019, Revised General Statutes, 1920, which was section 2 of Chapter 6488, Acts of 1913. Section 5942 of the Compiled General Laws, above referred to, reads as follows:

"5942. (4019) Child Under Twelve Not Permitted To Engage In Certain Employments.—No child under twelve years of age shall be employed, permitted, or suffered to work in, about or in connection with any store, office, or in the transmission or sale of merchandise, or in the transmission of messages, in any city of six thousand population or more."

Section 5942, Compiled General Laws, uses the words, *Shall be employed, permitted or suffered to work in, etc.*" These same words are used in Section 5943, Compiled General Laws. The difference in the two sections being the age limit of twelve years in certain classes of work as set forth in Section 5942, Compiled General Laws, and the age limit of fourteen years in certain other classes of work as set forth in Section 5943. The object and purpose of the sections are undoubtedly the same but as applied to children of different ages and engaged in different kinds of work.

"To work in, about or in connection with any store, office, etc." The term work as used in this statute in my opinion clearly means the doing or performing some part of those things (either mental or physical effort or both) which, when done, effectively aids in the accomplishment of the scheme or purpose of which the act, or work or expended effort is a part.

The matter of compensation does not enter into the question as to whether expended effort is or is not work. Usually, of course, one does not work for another without compensation in some form. It is urged that there is no compensation to the children who dance at the theater, as to this, I am not at all satisfied—the chance and opportunity of exhibiting ability to the public is no doubt frequently very valuable, but as I view this statute, this question is not decisive of the rule of construction to be placed on the act. It would no doubt be decisive if the Legislature had not used the words, "permitted or suffered," as well as the word employed. So if it be admitted that the children are not employed because there is no compensation, yet the Legislature has gone further and said, shall not be "permitted" to work, etc. This then covers the case where the dancing is done without pay or compensation and to make doubly sure that children under the prohibited age should not engage in the particular classes of work, adds the word, "suffered." Thus even if the theater did not wish to pay the child, and did not want to *permit* the child on its own solicitation to dance, yet the theater operator is prohibited from permitting the appeals of the child or parents to cause him to open his heart and "suffer" the child to dance.

It is clear in my mind, from the facts as stated, where the dancing act of the children forms a part of the program for which admission is charged and where the act is advertised, that this dancing act is an expenditure of effort on the part of these children participating, whose effort unquestionably aids effectively in carrying out the scheme of the theater, to-wit: Furnishing the public an entertainment for which they are willing to pay.

Thus it is that I reach the conclusion that the state of facts as set up, brings the children in question within the prohibition provided for in Section 5943, Compiled General Laws, and they should not be permitted to act or dance under such circumstances.

I have read the cases cited by you and Mr. Milam, but, under the specific terms of our statute above referred to, I feel that my opinion, as above stated, is clearly what the Legislature intended by this Act, and it is by this intention that we must be governed.

Very respectfully,

CARY D. LANDIS,
Attorney General.

SCHOOLS, PUBLIC, FREE—AGE LIMIT SIX TO TWENTY-ONE
YEARS

September 22, 1932.

Dear Sir:

This refers to your favor of September 21st.

The law provides that all children over six years and under twenty-one years shall have the right to the free public schools of this State. The school board, unquestionably, has the right to use all reasonable methods to determine whether or not children are within the proper ages. Birth certificates are no doubt a good method. This is a practical problem that will have to be worked out locally. If birth certificates are lost, then the next best method should be used. The board has a right to reject a child if they have a reason to feel that it was not within the proper ages.

Very truly yours,

CARY D. LANDIS,
Attorney General.

LAWYER—LICENSE TAX REQUIRED

September 30, 1932.

My Dear Sir:

This refers to your favor of September 27th, in which you request my opinion as to whether or not a lawyer employed in a law office is a practitioner such as will require him to pay a license tax as is covered by Chapter 14491, Acts of 1929.

I beg to advise that my predecessor, the Hon. Fred H. Davis, now a justice on the Supreme Court bench, has rendered an opinion on this subject which is as follows:

"The subject of license taxes on lawyers is now covered by paragraph (i) Section 15, Chapter 14491, Acts of 1929, which imposes the tax upon every "practitioner" of law or any other profession.

"A lawyer employed in a law office is just as much a practitioner of law as he would be if engaged in the practice on his own account. I do not see how such lawyers can escape liability for the license tax imposed."

I have heretofore confirmed this opinion and I do now confirm it.

Respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—NOT APPLICABLE IN
CERTAIN CASES

September 27, 1932.

Dear Sir:

Replying to your favor of the 24th instant, in which you state that your company is engaged in writing accident insurance on railway employees in the State of Florida, with reference to which arrangements are made with the railroad companies for the deduction of the amount of the premiums on the policies from the pay roll, as to which you wish to be advised whether or not under the provisions of Chapter 15787, Acts of 1931, this would be construed to be an assignment of wages such as would require documentary stamps, permit me to say it is my opinion that this would not be an assignment of wages requiring documentary stamps.

The wages of the employees are not assigned, but the railroad company is merely authorized to withhold a part of such compensation and pay the same to the insurance company for the benefit of the employees.

Yours very truly,

CARY D. LANDIS,
Attorney General.

GENERAL ELECTION—NOMINEE NOT REQUIRED TO PAY
ANY FEE

October 5, 1932.

Dear Sir:

This refers to your favor of September 29th.

There is no provision of law requiring the payment of any fee by the nominee of a political party to qualify such nominee for the General election.

Yours very truly,

CARY D. LANDIS,
Attorney General.

POLL TAXES—ONLY OFFICERS AND ENLISTED MEN EXEMPT

October 5, 1932.

Dear Sir:

This refers to your favor of October 3rd.

Only active officers and enlisted men of the Florida National Guard are exempt from the payment of poll taxes, under Section 2070, Compiled

General Laws of Florida, 1927. Honorary membership in a company or battery in Florida does not exempt such member from the payment of his poll taxes, and his failure to pay same disqualifies him as a elector and also from holding public office.

Very truly yours,

CARY D. LANDIS,
Attorney General.

TAX ASSESSORS—IN RE COMMISSIONS FOR ASSESSING STATE
LANDS, AND LANDS BELONGING TO WIDOWS

October 5, 1932.

Dear Sir:

This refers to your letter of September 30th.

In my opinion the Legislature has failed to provide any compensation for the county tax assessor for carrying on the assessment roll lands certified to the State. The law requires that the lands shall be carried on the roll but the taxes are not extended. In discussing this question, Former Attorney General, Fred H. Davis, on January 13, 1930, said:

"Owing to the situation above stated, it would be impractical, if not without authority of law, for either the Comptroller under Section 1030, or the Board of County Commissioners under Section 1031, to compute payments to assessors for commissions for assessing tax certificate lands, and it is doubtful whether such Sections in themselves contain authority for making the payments of commissions on such lands."

"It therefore appears to me that the situation presents a case where legislation will have to be enacted before the claim of tax assessors for commissions for assessing State land can be paid."

As to the right of tax assessors for assigning property of widows which may be exempt, former Attorney General Fred H. Davis, under date of November 18, 1929, in a letter to the Clerk of the Circuit Court of Walton County, said:

"I am, therefore, of the opinion that tax assessors in making up their rolls should proceed to value property of exempt persons such as widows, just as if no exemption existed, but should note in connection with the assessment whether or not the exemption is allowed and the amount thereof. This means that the tax assessor is entitled to be paid his commissions for assessing real and personal property according to the valuation he places on same for purposes of taxation, without taking into consideration any deduction in valuation because of an exemption."

Very truly yours,

CARY D. LANDIS,
Attorney General.

TAX COLLECTOR—FEES UNCOLLECTED INURE TO OFFICE
AFTER TERM OF OFFICIAL EXPIRES

October 5, 1932.

Dear Sir:

This refers to your letter of September 29.

Section 757, Revised General Statutes of Florida (970, Compiled General Laws, 1927), as amended by Chapter 15798, Acts of 1931, provides that the collector shall not be entitled to any commission for the sale of any property made by the State of Florida, until said commission is paid upon the redemption and sale of the tax certificate or certificates issued thereon to the State.

In the recent case of Martin versus Karel, Sheriff of Orange County, yet reported, the Supreme Court of Florida, speaking through Mr. Justice McQuinn, said that fees collected by officers represent the charge which the State makes for services rendered by it through its officers, and that such fees are the property of such State. It was also said that a public officer has no estate in his office, and that the unearned fees or commissions accruing to him after his term of office expires are not property.

It is my construction of the law, and I think my position is sustained by the opinion of the Court in the case just referred to, that the fees follow the officer, and an officer is entitled to his commission on fees actually collected during his incumbency. In other words, if fees are earned during the tenure of an officer but not collected, those fees belong to the State or County, and the officer should have no right to claim a commission thereon, if the same are collected after his term of office expires and during the incumbency of his successor.

Very truly yours,

CARY D. LANDIS,
Attorney General.

ELECTORS—SUPERVISOR OF REGISTRATION REQUIRED TO
PUBLISH CERTIFIED LIST

October 7, 1932.

Dear Sir:

This refers to your favor of the 5th instant, and in reply I would state that Section 284 of the Compiled General Laws, 1927, requires the Supervisor of Registration to have published within fourteen days after the second Saturday in the month preceding the day of election a certified list of the qualified electors of each election district wherein an election is held.

Former Attorney General Davis, now a member of the Supreme Court, held that the publication shall be in a newspaper published in the county. I concur in his holding in this respect. October 22nd this year is the second Saturday in the month preceding the day of election. The Supreme Court

has held that where a statute reads as this one does, that it does not refer to the calendar month, but to the thirty days preceding the day of election. Thus it is that it is my opinion the list of qualified electors must be published on or before the 4th day of November, 1932.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

VACANCY—BROWARD COUNTY PORT DISTRICT—STATUTE
AUTHORIZES GOVERNOR TO FILL

October 7, 1932.

Dear Sir:

Chapter 15107, Laws of Florida, Special Acts of 1931, repealed Chapter 12562, Acts of the Legislature of 1927, creating the Broward County Port District, and created a Port District in Broward County to be known and designated as the "Broward County Port District," and in Section 9 it is provided that the then present members of the Broward County Port Authority shall hold office for which they were elected, until January 1, 1935, or until their successors have been elected and duly qualified. It is also provided that the term of office shall be for four years.

It is further provided in said Section that any vacancy occurring in the Broward County Port Authority shall be filled by appointment of the Governor, and the member so appointed shall serve during the unexpired term for which he was appointed. If there is any reason why such appointee cannot serve during the unexpired term of the deceased member whose vacancy he was appointed to fill, it must be found in the Constitution.

Section 6 of Article 18 of the Constitution provides that the term of office for all appointees to fill vacancies in any of the elective offices under this Constitution shall extend only to the election and qualification of a successor at the ensuing general election.

In my opinion the office of member of the Broward County Port Authority is not an office under the Constitution, a vacancy in which can be filled by appointment of the Governor only until the ensuing general election in contemplation of Section 6 of Article 18.

The Constitution does not create or require any such office as member of the Broward County Port Authority, and in my opinion a vacancy in such office may be filled under authority of Section 7 of Article 4 of the Constitution, which provides: "when any office from any cause shall become vacant and no mode is provided by this Constitution or by the laws of the State for filling such vacancy, the governor shall have the power to fill such vacancy by granting a commission for the unexpired term."

The Constitution does not provide any mode for filling vacancies in the office of member of Broward County Port Authority, but the law creating such district does, and the Constitution as I construe it provides that such vacancy shall be filled for the unexpired term of the deceased member.

Yours very truly,

CARY D. LANDIS,
Attorney General.

PUGILISTIC EXHIBITION—APPLICATION OF LAW EXCEPTION
NOTED

October 7, 1932.

Dear Sir:

Section 7186, Compiled General Laws of Florida 1927, prohibits any pugilistic exhibition, fight, or encounter, between man and man in this State.

Section 7188 defines pugilistic exhibition, encounter or fight, with or without gloves, to mean any voluntary fight or personal encounter by blows between two or more persons for money, prize of any character, points, distinction or fame, or other thing of value, or upon the results of which any money or thing of value is bet or wagered, or for which any admission is charged directly or indirectly.

The only exception to the prohibition against such boxing is that nothing contained in said Act or in any law or municipal regulation to be construed as applying to boxing exhibitions held by or under the auspices of the American Legion or companies or detachments of the Florida National Guard, Y. M. C. A. or any college which is a member of any recognized amateur athletic association.

Yours very truly,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—CONSTRUCTION IN RE
AMOUNT REQUIRED ON LEASE

October 11, 1932.

Dear Sir:

Replying to your letter of the 10th instant, I beg to advise that Chapter 15787, Laws of Florida, Acts of 1931, imposes a tax on deeds, instruments or writings whereby any lands, tenements, or other realty or other interest therein shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers or any other person or persons at the rate of 10 cents on each \$100 of the consideration thereof.

It is also provided that when the full amount of the consideration is not shown in the face of such instrument, then the tax shall be at the rate

of 10 cents for each \$100 or fractional part of the consideration. This shows the intent of the Legislature to impose the tax on the full consideration of the conveyance represented by instrument, which is required to bear the stamp.

The property referred to in your letter, being situated in Florida, the lease referred to is required to have the stamps under said Act imposed attached, and it being a five-year lease at an annual consideration of \$10,000, the amount of the tax imposed is \$50.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CANDIDATES—MINORITY PARTIES TO WRITE IN NAMES ON
BALLOT—STICKERS ILLEGAL

October 11, 1932.

Dear Sir:

This refers to your favor of the 10th instant.

Under the decision of the Supreme Court candidates of the Socialist Party and all minority parties who have not heretofore cast 30% of the vote will not be placed upon the ticket. It will be necessary in order to vote for any of the candidates for the minority parties to write in the names of candidates on the ballot and then make the proper cross mark before the name after it is written in.

In the Hutchins case in Orange County it was not a question of stickers. In that case where some people voted in the second primary at precincts in other parts of the State and their ballots then had to be sent on to Orange County, some of these people when they voted in the other counties found that the ballot was short, and there was not room enough on the ballot to write in the names of all of the candidates that were voted for in the second primary in Orange County, and in order to have room to write the name on they simply pasted another piece of paper on the ballot and then wrote in the name on this and made the proper cross mark. It is illegal to use stickers on any ballot and it should not be done, as it would invalidate the ballot.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

BOARD OF PUBLIC INSTRUCTION—APPLICATION OF STAT-
UTES IN RE AUTHORITY TO BORROW EIGHTY
PER CENT OF BUDGETED REQUIREMENT

October 14, 1932.

Gentlemen:

The constitutional County School Fund consists of the county ad valorem tax of not less than three nor more than ten mills, the proportion of interest on the State School Fund, the one-mill State tax apportioned to the county,

all capitation taxes collected within the county, and all appropriations by the Legislature. See Sections 8 and 9 of Article XII of the Constitution.

Chapter 15779, Laws of Florida, Acts of 1931, empowers the county boards of public instruction to borrow sums not exceeding eighty per cent of the amount of revenue reasonably expected to be received from the State from the County School Fund at a rate of interest not exceeding eight per cent, provided the estimate of all revenue to be received from said funds has been approved by the State Superintendent of Public Instruction, and provided further that any moneys borrowed under the provisions of said Act for any fiscal year shall be repaid to the parties from whom borrowed out of the first receipts from the State from the County School Fund. The money received from the State from the County School Fund consists of the net proceeds from the Motor Vehicle License Tax, the one-mill State ad valorem tax, and the interest on State School Funds, and it is eighty per cent of the sum reasonably expected to be received from these sources which the County Boards of Public Instruction are empowered to borrow under the provisions of Chapter 15779. The limitations upon said borrowing power are that the amount of such revenue reasonably expected to be received shall first be approved by the State Superintendent, and further that all moneys borrowed under the provisions of this Act for any fiscal year shall be first repaid before any further amount can be borrowed.

If money is borrowed by the county board of public instruction under authority of Chapter 15779, all conditions and requirements being first complied with as to the limit of eighty per cent of the amount of revenue reasonably expected to be received from the State from the County School Fund, the approval of the State Superintendent of Public Instruction as to the estimate of all revenue to be received from said source, and the re-payment of all sums borrowed under said Act during the preceding or previous fiscal year or years, the same would constitute a valid loan to and obligation of the board of public instruction for the re-payment of which the money to be received from the State from the County School Fund for the current year may be lawfully pledged.

It is further provided in Chapter 15779 that the right and power to borrow money therein granted shall be cumulative to the powers already existing, but the anticipated receipts from the County School Fund shall not be considered in borrowing under any other Act.

As I construe the provisions of this Act, the Board is authorized to borrow under the limitations therein prescribed, without reference to the limitations or requirements for borrowing under any other Act, but in considering the limitation upon the power or authority of the Board to borrow for the operation of the schools of the county for any given year, that is, as to the total amount which the Board may borrow during any given year, this Act should be read in connection with Section 566 of the Compiled General Laws of Florida, 1927, which limits the power of the Board to borrow in any one year to eighty per cent of the amount estimated by them to be required for the maintenance of the necessary common schools of the county for the next ensuing scholastic year.

As I construe these two statutes together, the Board may borrow the limit under Chapter 15779, and in addition thereto it is empowered to borrow such further sum, which, taken together with the amount borrowed under Chapter 15779, would not exceed eighty per cent of the budgeted requirement for the current year. But I do not understand that it was the legislative intent in the enactment of Chapter 15779 that money borrowed under the provisions of Section 566, Compiled General Laws of Florida, 1927, for any previous year, must first be repaid before the Board may borrow under Chapter 15579.

Yours very truly,

CARY D. LANDIS,
Attorney General.

OFFICE—APPLICATION OF CONSTITUTION IN RE UNEXPIRED
TERMS

October 17, 1932.

Gentlemen:

Replying to your letter of the 15th instant, I respectfully refer you to the following provisions of the State Constitution:

Section 6 of Article 18 limits the term of office for all appointees to fill vacancies in any elective office under the Constitution to the election and qualification of a successor at the ensuing general election.

Section 9 of Article 18 requires that a general election shall be held in each county every two years for all elective State and county officers whose terms of office are about to expire, or for any elective office that shall have become vacant. The office of Clerk of the Circuit Court of Duval County became vacant upon the death of the former clerk, Mr. Brown. The term of office of his successor by appointment terminates on the 8th of next month, and Section 9 of Article 18 requires the unexpired portion of Mr. Brown's term to be filled at the general election held November 8th this year. The fact that no one was nominated in the primary for this unexpired term, if such be the fact, does not relieve the responsibility of provision for and the filling of said office for the unexpired portion of the present term. Even though Mr. Brown had died after the notice of the presently ensuing general election was published, still this unexpired portion of his term of office could be filled at this election. See Advisory Opinion to the Governor, III So. 252.

Section 7 of Article 18 provides that elections to fill vacancies in office shall be for the unexpired term. The constitutional requirement is that both the unexpired portion of the present term and the next full term of said office shall be filled at the general election, November 8th. If no one is elected November 8th for the unexpired term, then under the provisions of Section 14 of Article 16, the present incumbent, Mr. Hitchcock, would continue in office until the first Tuesday after the first Monday in January, 1933, without any further appointment, bond or commission.

In other words, the party elected only for the term beginning Tuesday after the first Monday of January, 1933, would have no right to fill the office from November 8th until that time unless, of course, he was also elected for such unexpired term.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTORS, QUALIFIED—FEE FOR PUBLICATION OF LIST

October 19, 1932.

Dear Sir:

Replying to yours of October 18th relative to the publication of the list of qualified electors, permit me to say Section 4668, Compiled General Laws, authorizes publishers of official notice or legal advertisement to charge not more than \$1.00 per inch for the first insertion, and \$.50 per inch for each subsequent insertion in single column, nonpareil type. However, I am informed that 8 point type is being used by some publishers, and that where this is done the publishers discount their bills 25%, which is presumed to make the cost equivalent to what it would have been had the notice or advertisement been published in nonpareil type.

Yours very truly,

CARY D. LANDIS,
Attorney General.

FLORIDA BUILDING AND LOAN ASSOCIATIONS—NOT AUTHORIZED INVEST FUNDS IN STOCK FEDERAL HOME LOAN BANKS

October 20, 1932.

My Dear Sir:

Section 20 of Chapter 10028, Acts of 1925, as amended by Section 15 of Chapter 11865, Acts of 1927, provides how and in what the funds of Florida Building and Loan Associations may be invested, in which there is no authority for investing such funds in the stock of Federal Home Loan Banks.

The matter of investment, being regulated by statute, the investments are confined to those securities specifically authorized by said Act. It is my opinion that such funds cannot lawfully be otherwise invested.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

INTOXICATING LIQUORS—IN RE POSSESSION

October 21, 1932.

Dear Sir:

Replying to your letter of October 19th, permit me to say Florida has a general State law which prohibits the manufacture, sale, and transportation of intoxicating liquors, whether for beverage purposes or not. This State also has a law making possession of liquor prima facie evidence of a violation of the law. In fact, it is against the law in Florida to possess liquor for any purpose. The only exception to this is medicinal and industrial alcohol, which may be possessed under a Federal permit.

If the applicant you refer to is granted a Federal permit to possess industrial alcohol to be used solely in the manufacture of fruit cakes, it would not be a violation of the Florida law. My predecessor, Honorable Fred H. Davis, held that a manufacturer of preserved fruits could legally transport brandy in Florida under a United States Government permit for the purpose of making a brandy flavored syrup into which the fruit might be packed.

Yours very truly,

CARY D. LANDIS,
Attorney General.STATE ROAD—STATE HIGHWAY DEPARTMENT CAN MAINTAIN
AFTER INCORPORATION INTO CITY—COUNTY
CAN POLICE

October 28, 1932.

Dear Sir:

This refers to your favor of October 27, in which you ask two questions:

First, you ask whether or not if Atlantic Boulevard, State Road No. 78, were taken inside the corporate limits of Jacksonville the State Highway Department could continue to maintain this highway after its incorporation into the city.

It is clearly my opinion that the State Highway Department could continue to maintain the highway, State Road No. 78, after it is taken into the corporate limits, and that no special legislation would be necessary.

Second, you ask whether or not the Duval County Road Patrol could police this highway after its incorporation into the city limits.

It is clearly my opinion that the Duval County Road Patrol, if properly authorized by the city, can police this or any other State highway that runs through the city limits.

Very truly yours,

CARY D. LANDIS,
Attorney General

SECURITIES LAW—CONSTRUCTION

October 29, 1932.

Dear Sir:

This refers to your favor of October 28th.

It is my opinion that if you will carefully read the Section pertaining to bonds of the Florida Securities Commission Act, Chapter 14899, Acts of 1931, you will reach the conclusion that the bond required by this Act is designed to protect the public who deal with dealers and salesmen, and while the bond runs to the Governor, it is my opinion that anyone who has suffered damages or been defrauded by the unfaithful compliance with the provisions of the Act, could bring a suit in the name of the Governor to cover such damages that may have been suffered. It seems to me clear that if a dealer makes use of pretended sales for the purpose of selling stock, that this would be a violation of the Act and would create liability under the bond. It is also my opinion that wrongful acts of the registered dealer in selling unregistered, or stock not exempt from registration, would create liability under the bond.

The above is only my opinion with reference to these matters for whatever it may be worth, as the exact and definite liability, as you know, must rest upon the particular set of facts involved.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

DOCUMENTARY STAMP TAX ACT—TRANSFER OF STOCK
SUBJECT TO

October 31, 1932.

Gentlemen:

This refers to your favor of the 25th instant.

I am clearly of the opinion that the transfer from the Executor to himself as testamentary trustee of 500 shares of the capital stock of the New Smyrna Investment & Loan Company, a Florida corporation, will require the stamp tax as set forth in Chapter 15787.

Chapter 15787 applies to all transfers of legal title to shares and such transfers must bear the proper amount of tax. The opinion referred to by you with reference to re-issue is where a party surrenders a certificate and another certificate is re-issued to the same party, in which case the law does not require the documentary stamp.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

WIDOWS—WHEN NOT ENTITLED TO EXEMPTION

November 1, 1932.

Dear Mr. Butt:

Replying to yours of October 31, permit me to say it is my opinion that widows owning property in the State of Florida who are not bona fide residents of this State are not entitled to the exemption provided under Section 9 of Article IX, of the Constitution of the State of Florida.

Very truly yours,

CARY D. LANDIS,
Attorney General.

TIRE DEALERS—LICENSE TAX REQUIRED—NO DISTINCTION
BETWEEN SECOND HAND AND NEW TIRES

November 1, 1932.

Dear Sir:

Replying to yours of October 28, permit me to say it is my opinion that the statute requiring automobile tire dealers to pay a license makes no distinction between those who deal in second hand tires and those dealing in new tires.

It is my opinion that where a filling station keeps no tires in stock but acts as an agent for tires and receives a commission for tires sold through the filling station as agent, that they should be required to have a tire dealer's license.

Very truly yours,

CARY D. LANDIS,
Attorney General.

JUSTICE OF THE PEACE—WHEN COSTS SHOULD BE PAID

November 4, 1932.

Dear Sir:

Replying to your letter of November 2nd, permit me to say where a justice of the peace, acting as a committing magistrate, issues a warrant for a public offense, and a hearing is held, after which the defendant is discharged, the justice is entitled to his costs to be paid by the county.

You will observe that Section 8488 provides that whenever a committing magistrate holds to bail or commits any person to answer a criminal charge in a county court, a criminal court of record, or a circuit court, and any information is not filed nor an indictment found against such person, the cost of such committing trial shall not be paid by the county except the costs for executing the warrant.

The statute does not prohibit the payment of costs except where the committing magistrate holds the accused to bail, or commits the accused to answer to one of the courts named in the statute. Therefore, it appears that where the accused is discharged there is no prohibition against the payment of the justice of the peace costs.

Yours very truly,

CARY D. LANDIS,
Attorney General.

GENERAL SCHOOL FUND—APPLICATION OF LAW IN RE COMMISSIONS FOR ASSESSING AND COLLECTING THE
TEN MILLS LEVY PROVIDED FOR

November 8, 1932.

Dear Sir:

On June 26, 1931, in answer to a request from the State Superintendent, I expressed the opinion that fees allowed by the statute to the county assessor of taxes and county tax collector for assessing and collecting the general school fund of the county were not payable out of said fund.

On July 22, 1932, an opinion was prepared by one of the assistants in the office, who being unaware of the opinion I had rendered in the matter, on the date above stated, after referring to an opinion by one of my predecessors, said:

"In view of the premises and in consideration of the ruling and policy having been standing for more than two years, I do not think that the same should be disturbed without a court decision to the contrary."

I now adhere to my opinion expressed to the State Superintendent in my letter of June 26, 1931, and the later opinion herein referred to may be disregarded.

Section 1028, Compiled General Laws, provides that the assessors' commissions for assessing the county tax shall be allowed by the county commissioners and paid by the county treasurer. Section 1033 provides that the collectors' commissions for collecting county taxes shall be audited and allowed by the county commissioners.

The Supreme Court in the case of *Coppedge vs. Bowden*, 98 Fla. 358, 127 So. 319, said that to audit and allow means to audit and pay if correct. The only difference between the two statutes is that the assessors' commission for assessing county taxes are audited by the county commissioners and paid by the county treasurer, whereas, the collectors' commissions for collecting county taxes is audited and paid by the county commissioners.

The county school fund is by law placed under the jurisdiction of the county school board, and in my opinion the county commissioners have no

authority to either audit claims against the county school fund or to pay therefrom. And the fact that the county commissioners are to audit claims for commissions of the assessor and collector of taxes for assessing and/or collecting county taxes indicates a legislative intent that such commissions shall be paid from the county general fund, which is by law placed under the jurisdiction of the county commissioners.

Section 15 of Article 12 of the Constitution provides:

"The compensation of all county school officers shall be paid from the school fund of their respective counties, and all other county officers receiving stated salaries shall be paid from the general funds of their respective counties."

The county assessor of taxes and the county tax collector do not receive stated salaries, but the fact that the first part of Section 15 of Article 12 states what officers are to be paid from the school fund indicates an intent on the part of the framers of the Constitution to exclude all other officers from participation in the general school fund of the counties in the matter of payment of salaries or compensation from said fund. The court in the Coppedge-Bowden case, *supra*, held that the organic provision that school funds shall be "for the exclusive use of public free schools" does not forbid the payment from such funds of reasonable statutory commissions for collecting taxes levied for school purposes. That case, however, involved a claim for collecting taxes assessed in and for special tax school district purposes, and the statute provides specifically that the commissions due the tax collector for collecting such taxes shall be audited and allowed by the county board of public instruction.

The court construed that provision to mean that the commissions for collecting the tax for special tax school district taxes should be audited by the county school board, and if correct, paid by them from the special tax school district taxes so collected.

I might say that this special provision for auditing and allowing commissions for collecting special tax school district taxes further indicates the legislative intent that commissions for assessing and collecting county taxes are to be paid from the county fund under the control of the board of county commissioners.

For your information I quote you an opinion rendered by former Attorney General T. F. West under date of January 28, 1913, as follows:

"Yours of the 25th inst. has been received and noted.

"Replying to same, I beg to say that, in my opinion, a tax assessor and tax collector have no right to deduct their fees from the school fund under Section 15 of Article 12 of the Constitution of Florida.

"I concur in the opinion which you express, that they are not school officers, and since they are not school officers, their compensation should not be paid from school funds."

Yours very truly,

CARY D. LANDIS,
Attorney General.

WILLS—FOREIGN BANK OR TRUST COMPANY NOT AUTHORIZED TO ADMINISTER ESTATES

November 14, 1932.

Dear Sir:

Replying to your letter of November 7th, permit me to say a foreign bank or trust company cannot act as trustee, executor, or administrator in this State under the will of a Florida resident without first obtaining a charter under the laws of this State, granting the exercise of such powers, duties, and functions as are performed by trust companies. If a foreign bank or trust company should attempt to administer the estate of a deceased resident of Florida, it would be an attempt to perform trust functions, and such functions cannot be performed by foreign banks and trust companies, unless they have been chartered under the laws of this State. However, foreign corporations may execute deeds without procuring a charter. See Sections 6126 and 6145, Compiled General Laws.

Yours very truly,

CARY D. LANDIS,
Attorney General.

ELECTION, BRIDGE—COUNTY COMMISSIONERS AUTHORIZED TO PAY EXPENSES

November 18, 1932.

Dear Sir:

This refers to your favor of November 16th, in which you request my opinion as to the source from which the expenses of the election recently held pertaining to the bridge across the St. Johns River at Arlington should be paid.

Chapter 15186, Acts of 1931, Laws of Florida, was approved on June 3rd, 1931, and Chapter 15188, Acts of 1931, was approved on June 4th, 1931. Section 5 of Chapter 15186 provides that the Board of County Commissioners shall pay all expenses of the preparation and furnishing of blanks and ballots, and all expenses thereof from the proceeds of:

First, The sale of bonds;

Second, From the general funds of the county, or

Third, From any money on hand with the Trustees for the present St. Johns River Bridge bonds over and above whatever amount may be necessary to retire the outstanding St. Johns River Bridge bonds and not otherwise appropriated.

The election has been lost and, therefore, there will be no sale of bonds, from the proceeds of which these expenses could be paid. Thus, it leaves it optional, under the wording of this Act, for these expenses to be paid either:

(a) From the general funds of the county, or

(b) From money on hand with the Trustees for the present St. Johns River Bridge bonds.

I understand there is money in the hands of Trustees of the St. Johns River Bridge bonds over and above the retirement of all bonds, in fact, you have stated that all these bonds have been heretofore retired. Thus it is, that it is my opinion, that it is now optional with the Board of County Commissioners to pay these expenses, either, from the general funds of the county, or from the available money in the hands of the Trustees for the present St. Johns River Bridge bonds.

Section 5 of Chapter 15188, if read literally, is in conflict with Section 5 of Chapter 15186, but both Acts pertain to the same matter, and the conflicting Act was approved just one day after Chapter 15186, and, therefore, in line with decisions of our Supreme Court, it is my opinion, that these Acts pertaining to the same matter, and having been enacted at practically the same time, it can well be presumed that the Legislature had in mind both Acts at the same time, and that they should be construed in *pari materia*. It is my opinion that Section 5 of Chapter 15186 can well be considered an exception to what appears to be a conflicting Section, to-wit: Section 5 of Chapter 15188. Some question has been raised as to the proper enactment of one or both of these laws, but this is an administrative office, as is also the Board of County Commissioners of your county, and it is my opinion, that unless and until a court of competent jurisdiction should hold one or the other of these laws invalid, the same should be relied and acted upon as valid laws.

Further, with reference to this matter, I understand Chapter 15186 was before the Circuit Court in Duval County and that the Act was allowed to stand on the theory that it gave the people the right to vote upon the question submitted, and this having been done, it is my opinion, that the Act should stand as to the resultant expenses of this election.

Thus it is, that it is my opinion that the Board of County Commissioners would be authorized to pay the expenses of this election either out of the general funds, or out of the available funds in the hands of the Board of Bridge Bond Trustees.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

ATTORNEY FEES—PAYMENT AUTHORIZED

November 17, 1932.

Dear Sir:

This refers to your favor of November 14th, and in reply I beg to state that it is my opinion, under the facts as set forth in your letter of November 4th, that the County Commissioners would be justified in paying you a reasonable fee for services rendered in connection with the protection of the bridge property and bridge tolls, the same to be paid out of such tolls or moneys as are in the hands of the County Commissioners be-

longing to the Bridge Fund. It is my opinion this would be authorized under the law, whether there was sufficient money budgeted for such item, or whether there was any budget item covering this expense. Litigation in the protection of property is a matter for which, it is my opinion, reasonable fees should be paid, whether the item was specifically budgeted or not. Litigation frequently arises in the protection of property which cannot be foreseen by the Budget Committee and, it is my opinion, that the law does not contemplate that proper and necessary litigation to protect county property should not be had.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

ELECTION—APPLICATION OF LAW IN RE COMMISSIONERS
LAKE WORTH INLET DISTRICT

November 18, 1932.

Dear Sir:

Replying to your favor of November 10th, in which you request my opinion regarding the election of commissioners of the Lake Worth Inlet District, permit me to say:

Section 3 of Chapter 781, Acts of 1915, provides that a special election shall be held for the election of commissioners of the Lake Worth Inlet District; that the three persons receiving the highest number of ballots cast on such special election shall be declared the commissioners until the General Election in 1916, and with each General Election every four years thereafter, but their successors shall be elected by the qualified voters to hold office for four years in the manner prescribed for the special election in the year 1915, as further provided for in this Section.

In view of the provisions of the Section above cited, it is my opinion that those receiving the highest number of ballots cast at the General Election held November 8th, 1932, should, pursuant to the terms of the Statute, be declared the commissioners.

You understand, of course, you are not bound by this opinion, and it might be advisable to have the matter settled by a Court of competent jurisdiction.

Very truly yours,

CARY D. LANDIS,
Attorney General.

CORPORATION BANKRUPT—CONSTRUCTION OF LAW IN RE
REPORT AND TAX

November 25, 1932.

Dear Sir:

This refers to your favor of the 21st instant, asking for my opinion with reference to Chapter 14677.

First. You ask if it is necessary for a corporation to file its annual report before it can file a petition in bankruptcy where the corporation has no assets and has been inactive for five years. If you refer to Section 5 of the Act you will find it is provided that a corporation "shall not be permitted to maintain any action in any court in this State until such reports are filed and all fees due thereunder paid." It is my opinion that under this clause, it will be necessary for your corporation to file its annual report and pay the proper fees, however, it is possible that a Federal Court might construe this to apply only to State Courts.

Second. You ask the question, does a corporation have to pay a tax to file this report, when the corporation has no assets and the corporate stock is worthless. I do not mean to say that the corporation will *have* to pay a tax when it has nothing to pay it with, but when those who are interested in the corporation sufficiently to want to place the corporation in a position of a discharged bankrupt, it seems to me that those who are so interested would be required to pay this tax.

Third. You ask the question whether or not the words: "has been adjudicated a bankrupt" apply only to corporations that have been adjudicated bankrupt prior to the passage of the Act. It is my construction of Section 7 of the Act that the words: "adjudicated bankrupt" means just what it says. It would apply to all corporations that were adjudicated bankrupt before the passage of the Act, or if adjudicated bankrupt after the passage of the Act, that the Section would likewise apply.

In answer to your fourth question, it is my opinion that a corporation must be adjudged bankrupt before the corporation would fall within the scope of the words: "adjudged bankrupt."

Very respectfully yours,

CARY D. LANDIS.

Attorney General.

BOND, TAX COLLECTING AGENCY—NOT SUBJECT TO
CANCELLATION

December 1, 1932.

Gentlemen:

This refers to your favor of November 28th, concerning the Royal Indemnity Company's surety bond in the sum of \$10,000,000, covering the Florida Securities Bureau, Inc., as principal and the State of Florida as obligee.

Judge Blanton is entirely correct in not cancelling this bond. These bonds are not subject to cancellation. Tax Collection agencies must each

year give a bond covering that year's transactions, and of course the bond does not cover a succeeding year, but the bond continues and remains alive until the statute of limitation has run against it with reference to the acts and conduct of the principal during the year for which the bond was given.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

COUNTY JUDGE—WHEN ENTITLED TO COLLECT FEE FROM COUNTY

December 2, 1932

Dear Sir:

This refers to your request for an opinion on the question of whether or not a county judge, where he has taken an affidavit and issued a warrant, may collect his fees from the county where the party was never arrested.

Section 5204, Compiled General Laws of 1927, relative to the fees of the county judge is as follows:

"5204. He shall receive the same fees for like services as are allowed by law to the justices of the peace."

Therefore, it seems clear that the county judge will be governed, in the collection of his fees, by the statutes which control a justice of the peace.

With reference to the prepayment of costs in a justice's court, we find the following Statutes in the Compiled General Laws of Florida:

"8490—Prepayment May Be Required.—In all cases of justices of the peace and county judges in this State, shall require payment in advance or security for costs of process, service of the same and of examination, unless the party applying for a warrant shall make an affidavit of insolvency and of substantial injury, to person or property, by him suffered, in which case process shall issue without payment of costs."

On this statute, I reach the conclusion that unless the county judge required the affidavit of insolvency, he should have collected, from the party making affidavit, his costs, either by payment at the time or by and through proper security. If he failed to collect his fees without taking an insolvency affidavit, it is my opinion he has no claim against the county. If he issued the process after obtaining the required affidavit of insolvency, then, I think, he would have a valid claim against the county for his fees.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

VACANCY—APPLICATION OF STATUTE IN RE METHOD
FOR FILLING

December 3, 1932.

Dear Mr. Clark:

This refers to your favor of the 2nd instant, in which you make inquiry as to how the vacancy caused by the death of J. L. Payne shall be filled.

In reply I beg to advise that Section 254 of the Compiled General Laws has this provision which covers the situation.

"Section 254. *Special Elections.* Special elections shall be held in the following cases: * * * Second. When a Vacancy shall occur in the office of State Senator or member of the House of Representatives of this State. But in the case of a vacancy in the office of State Senator or member of House of Representatives a Special Election shall not be held unless a session of the Legislature shall be held after the vacancy occurs and before a General Election."

The law further provides that the Governor shall make an order declaring on what day the election shall be held and deliver the same to the Secretary of State, who shall publish notice of election to be held in one or more newspaper, etc.

Trusting that this gives you the desired information, I beg to be

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

TAX REDEMPTION—CONSTRUCTION OF LAW IN RE COSTS
AND FEES OF REDEMPTION OFFICER

December 3, 1932.

Dear Sir:

This refers to your favor of December 1st.

It is my opinion that Section 3 of Chapter 15791 clearly covers the question you ask. You will note that Section 3 provides for redemption after a period of four or less years from the time installment redemption begins, and provides specifically the amounts to be paid to the officer having charge of redemption thereof. First: There shall be paid to such officer a sum equal to the accrued interest, as provided in Section 2 of the Act, together with the *costs and fees*, if any, and 20% of the face of such lien. Sub-Section 3 of Section 3 of the Act then provides:

"That thereafter there do be paid to such officer in installments the aggregate of which installments shall be annually equal to 20% of the face of such certificate and accrued interest on such balance."

You will note the Act provides that the costs and fees of the redemption officer are only paid once, and that is in the first instance. It is my opinion that on the other installments there are no costs to be paid to the redemption officer.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

VETERAN'S EXEMPTION—EACH MEMBER OF ORGANIZATION MUST BE QUALIFIED TO BE SUBJECT TO

December 6, 1932.

Dear Sir:

This is a reply to your telegram of the 5th.

I do concur in opinion of former Attorney General Davis relative his letter to Governor Carlton dated July 18th, 1929, covering Veteran's exemption occupational tax but it is my opinion that license cannot be granted under exemption to Department of Florida Veterans. It is my opinion that license to operate Theatre may be granted to one or more individuals each of said individuals being such disabled Veteran as set forth in Section 1 of Chapter 13876, Acts 1929, and each of such Veterans must comply with requirements of said Section 1. To issue license to Department of Florida Veterans might be the issuance of license to organization which would include members not qualified for the legal exemption.

Yours very truly,

CARY D. LANDIS,
Attorney General.

NOTES AND BONDS—SUBJECT TO INTANGIBLE AND DOCUMENTARY STAMP TAX

December 8, 1932.

Dear Sir:

This refers to your favor of December 7th, in which you request my unofficial opinion as to whether or not the intangible tax on notes and bonds secured by mortgage was intended by the Legislature to cover the total tax the owner would be required to pay for all purposes.

I find nothing in the Act to this effect. On the other hand, such notes, bonds, etc., would unquestionably be subject to other tax, such as the documentary stamp tax, etc.

Very truly yours,

CARY D. LANDIS,
Attorney General.

FEES—COUNTY OFFICERS

December 14, 1932.

Dear Sir:

This refers to your favor of the 12th instant, and in reply I would state that it is my opinion that all completely earned fees of County officials are payable to such person, even though they are not paid when they leave office and the successor takes over the office. A completely earned fee is a fixed obligation against the county and is payable when the county gets the funds, but where fees are not completely earned, that is, where an officer has done something but there must be something done in the future before the fee is completed or earned, such fees will go to the man who is in office at the time the act is completed which matures the fee.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

CORPORATIONS—METHOD OF CONVEYING PROPERTY
AND ASSETS

December 15, 1932.

Dear Sir:

This refers to your favor of the 13th instant, addressed to Hon. Fred H. Davis, who is now on the Supreme Bench, and who was my predecessor in office.

With reference to the two corporations, one of which you say is active and the other non-active, and you wish to know whether the President and Secretary can convey the property of one corporation to another. The President and Secretary can convey the property of the corporation under the direction of the Board of Directors if it is an incidental matter and only a part of the property. If it is a conveyance of all of the assets of the corporation, the transfer must be authorized by a stock-holders meeting. In either event, the corporation conveying the property must have filed its proper reports and paid the filing fee tax to the Secretary of State in order to re-establish its existence to the extent that it can do business.

Very respectfully yours,

CARY D. LANDIS,
Attorney General.

TAXATION—WHEN MANUFACTURERS OF ROPE EXEMPT

December 16, 1932.

Dear Sir:

This refers to your favor of December 14th.

Under the amendment to the Constitution of the State of Florida, known as Section 12 of Article IX, and under the definition of fabrics as given by Webster's Dictionary, it is my opinion that a manufacturer of rope using

hem and jute in the manufacture thereof could be exempt from taxation, according to the terms of the Section and Article above cited.

Of course, if the taxing authorities wish to be very technical in construing the term fabric and should see fit to test the matter in the Courts, I cannot anticipate what the Courts' final judgment would be.

Very truly yours,

CARY D. LANDIS,
Attorney General.

COUNTY EXECUTIVE COMMITTEES—ACT GOVERNING CONSTRUED

December 17, 1932.

Dear Sir:

This refers to your favor of December 15th.

The latest act of the Legislature, governing county executive committees of political parties, is Chapter 13761, Acts of 1929. Under Section 3 of said Chapter, you will find that the powers of the county executive committee and its officers are those "usually exercised by such committees and by the officers thereof not inconsistent with the provisions of said Chapter."

You will see from the provisions above quoted that the powers of the committee and its officers are not clearly and definitely defined; however, it is my opinion that the officers of a county executive committee would have only such powers as might be authorized by a majority of the membership of the committee.

You will see from reading the Chapter above cited, that while there is no express prohibition against the committee employing a campaign manager, that the statute does not contemplate the employment of a campaign manager. This statement is based upon the following provision of Section 3, relative to the powers of the county executive committee, which reads as follows:

"Each of the several executive committees herein provided for shall have the power to appoint from its own membership proper and necessary sub-committees."

Very truly yours,

CARY D. LANDIS,
Attorney General.

FORTUNE TELLERS—LICENSE TAX REQUIRED

December 23, 1932.

Dear Madam:

Replying to your letter of December 19th, I beg to advise that the Florida laws impose a State License tax upon fortune tellers of five hundred dollars in each county. In addition to this, there is imposed a county tax of 50% of the State tax for each county, and the municipality may impose a like tax as that imposed for the county.

Very truly yours,

CARY D. LANDIS,
Attorney General.

LIQUORS—ALCOHOLIC OR INTOXICATING—CONSTITUTION
PROHIBITS MANUFACTURE AND SALE

December 23, 1932.

Dear Sir:

Section 1 of Article XIX of the Constitution of Florida forever prohibits the manufacture, sale, barter, or exchange of alcoholic or intoxicating liquor or beverages, whether spirituous, vinous or malt. Therefore no liquors or beverages can lawfully be sold in this State which contains alcohol or is intoxicating, and the percentage of alcohol is not determinative of the question of its prohibition. If it contains alcohol, the manufacture, sale, barter or exchange is prohibited and the Legislature is powerless to legalize the sale of alcoholic or intoxicating liquors in this State so long as Section 1 of Article XIX remains in force.

The Legislature by joint resolution may submit an amendment to the Constitution for ratification or rejection of the qualifying electors of the State at the General Election to be held the first Tuesday after the first Monday in November, 1934.

The next regular session of the Florida Legislature convenes on the first Tuesday after the first Monday in April, 1933.

Very truly yours,

CARY D. LANDIS,
Attorney General.

Index

A

ABSENTEE BALLOTS:	PAGE
Construction of Law	582
ABSENTEE VOTERS:	
Ballots may be cast in second primary	581
Compensation to County Judge for taking oath not authorized	584
Method of casting ballot	580
ACCOUNTANCY:	
Board authorized to elect Chairman and retain counsel.....	408
Construction of law <i>in re</i> : Certified Public Accountants and Public Accountants	774
Construction of law	407
Law authorizes Board to employ Counsel in certain matters.....	964
Repeals former Act	409
ADDING MACHINES:	
License Tax required of Agents	707
ADJUTANT GENERAL (Letters to)	352
ADMINISTRATORS:	
Liquidator, not good policy to act	573
Non-Residents eligible to act	810
ADMINISTRATORS AND EXECUTORS:	
Non-Residents authorized to act but not Foreign Corporations.....	991
AD VALOREM TAX	
Aeroplanes subject to	689
Motor Vehicles not subject to	937
Payment prerequisite to vote in Special Tax School District Election	1011
Unconstitutional <i>in re</i> : Motor Vehicles	674
ADVERTISING:	
Supplies and equipment State Road Department.....	440
ADVERTISING FUND:	
Money received by counties under Racing Act may be used.....	353
ADVERTISING, LEGAL:	
Right of county official to receive commission	741
ADVERTISING, POLITICAL:	
Law Construed	609
AEROPLANES:	
Subject to ad valorem tax	689
When liable for license tax	708
AEROPLANES OR SEAPLANES:	
License tax required when engaged as Common Carriers for hire.....	695
AGRICULTURAL ENUMERATORS:	
Expenses of printing blanks and salary payable from certain fund....	345
Term of office	957

	PAGE
ALCOHOL:	
Constitution prohibits manufacture and sale	1066
Prescriptions for Physicians only	748
ALCOHOLIC BEVERAGES:	
Citrus and other fruit syrups containing only one-half per cent of alcohol not classed as	930
ALCOHOL, LIQUORS, WINES:	
When sale authorized	1022
AMERICAN LEGION HOME:	
County Commissioners not authorized to make donations	467
AMUSEMENT PARKS:	
License may be granted before opened and equipped	873
License taxes under Section 1080, Exemption under Section 1268	616
APARTMENTS:	
Subject to inspection—License tax	435, 436
APARTMENT HOUSES:	
Law repealed but prior taxes not affected.....	844
Subject to inspection license tax	436
APPEALS CRIMINAL CASES:	
Construction of statute	623
APPROPRIATIONS:	
Construction of law, <i>in re</i> : Special Fund State Board of Health	419
Construction of law, <i>in re</i> : State Forester	428
APPROPRIATIONS AND EXPENDITURES:	
Attorney General	36
APPROPRIATION BILL:	
Construction <i>in re</i> : Salaries of officials	357
Construction <i>in re</i> : Unexpended balance	315
Construction of certain provisions	272
Salary of State Attorneys	394
ARMY OFFICER, RETIRED:	
May qualify as a candidate	935
ARMY OFFICERS AND ENLISTED MEN:	
Exempt from payment of poll tax	1043
ARSENIC:	
Law construed as to use	338
ASSESSMENT ROLL:	
Correction of errors authorized	673
ATTORNEY'S FEES:	
Payment authorized	1058
ATTORNEYS GENERAL OF FLORIDA, 1845-1932	7
AUTOMOBILES:	
Ad Valorem Tax unconstitutional	674
Authority of City to assess for taxation	724
City given special power to regulate operation For Hire; Refund not authorized	382
Cities authorized to regulate weight or loads while being operated on streets	722

AUTOMOBILES— <i>Continued</i>	PAGE
Dealers not authorized to operate on highways without tag.....	615
License tax when owned by county	554
Sale for storage charges	738
Title Certificate evidence of ownership	814
When assessable as Personal property	686
When \$2.00 tag tax applicable, <i>in re</i> : Officials and Employees of State Road Department	454
When soldiers, Army and Navy; members Immigration Patrol sub- ject to license tax	693
When owner ceases to be non-resident	386
AUTOMOBILE LICENSE TAGS:	
Distribution of proceeds	740
Only active U. S. Officials entitled to free	883
Procuring from county other than county of residence	739
When officers and enlisted men in U. S. Army and Navy exempt....	352
AUTO TAG AGENCY:	
Duties <i>in re</i> : Issuance of and collection for License Tags	386

B

BAIL BONDS:	
Documentary stamps require	1034
Duty of Sheriff	642
BALLOTS:	
Blind Person or one incapable of marking may be assisted.....	989
Construction of law, <i>in re</i> : Absentees	582
Disposition of by City left to governing authority	720
Election Inspectors authorized to assist in marking	528
Election law does not permit being taken to bedside of voter.....	662
Legal to write in names	757
Minority parties to write in names of candidates—stickers illegal.....	1048
Only the name of nominee in Primary can be printed for General Election	976
Prerequisite for person to have name placed on in General Election....	958
Referendum clause should appear	590
Two Inspectors may assist voter in marking	979
Two questions may be submitted on	836
When Inspectors authorized to assist in marking	1001
When name of candidate in General Election cannot be printed on....	900
BALLOT BOXES:	
County Commissioners required to furnish three sets	659
Destruction of contents	649
Disposition of contents	644
Poll Lists, etc., to be preserved	645
Possession and view, application of law	997
Three sets required	952

1070 BIENNIAL REPORT OF THE ATTORNEY GENERAL

BALLOT DUMMY:	PAGE
Within law to print	996
BAKERIES:	
Main and branch plants liable for license tax	887
BAKING COMPANY:	
Method of determining state and county licenses	1002
BANKRUPT CORPORATION:	
Construction of law <i>in re</i> : Report and tax	1060
BANKRUPT ESTATES:	
Deeds of assignment require documentary stamps	1039
BANKS:	
Application of intangible tax	908
Capital stock reduced	803
Intangible tax to be in lieu all tax except ad valorem	825
Interest should be paid when size of each account justifies.....	608
Tax Assessment	670
When not required to register as dealers in securities	981
When required to pay interest on county funds	892
BANKS AND TRUST COMPANIES:	
Claims must be filed with Liquidator within one year	840
Requirements for voluntary liquidation	735
BANKS AND TRUST COMPANIES AND	
BUILDING AND LOAN ASSOCIATIONS:	
State Comptroller has supervision and may appoint Liquidator	1008
BANKS, CLOSED:	
Application of Freezing Act	917
Claims must be sworn to and filed with Liquidator	265
Not subject to intangible tax	911
Suit should be brought in name of Liquidator	360
BANKS, DEFUNCT:	
Liability with regard to checks	741
BANKS, INSOLVENT:	
Certain rights of depositors forfeited	861
Classification of claims	375
Construction of law <i>in re</i> : Time to file claim with Liquidator	795
BANKS, STATE:	
May re-discount its paper or borrow money	294
BANK STOCK:	
Assessment	756
BARBERS:	
Cripple not exempt from payment of examination fee	856
Municipality empowered to impose license, etc.	799
War Veterans not exempt from payment of registration fee	833
BARBER EXAMINERS:	
When members entitled to compensation	409
BARBERS' LAW:	
Fees, punishment for violation	890

BASEBALL:	PAGE
Unlawful to play on Sunday	752
BEAUTY CULTURE:	
Persons practicing subject to requirement of law	945
BEAUTY PARLOR:	
If certain employees exempt from complying with Barber's Act	879
BENEVOLENT OR CHARITABLE ORGANIZATION:	
Statute broad enough to include	792
BEVERAGES:	
Citrus and other fruit juices	930
Sale of extracts, perfumes, toilet preparations or medicines, applica- tion of law	999
When law does not prohibit manufacture or sale	577
When sale prohibited	1027
Unlawful to transport liquor	783
BIDS:	
Advertising for supplies and equipment State Road Department	440
BILLBOARDS:	
Taxes	728
BILL OF SALE:	
When documentary stamps not required	945
BIRDS—NON-MIGRATORY GAME:	
When land owner within right to kill	567
BIRDS, WILD, NEST AND EGGS:	
Application of law <i>in re</i> : Permits to collect specimens	433
BLUE SKY LAW:	
Construction of	736
BOARDING HOUSES:	
Interpretation of law, <i>in re</i> : Occupational license tax	709
BOARD OF ADMINISTRATION:	
Disposition of funds under provision of Senate Bill No. 40-XX, Chapter 15770	322
Judgment against Leon County authorized to be paid	335
BOARD OF BOND TRUSTEES:	
Governor not authorized to fill vacancy by appointing member	224
BOARD COMMISSIONERS STATE INSTITUTIONS:	
Commitment boys to Industrial School	360
Commitment and discharge of boys at Industrial School	370
Not authorized to install Sprinkler system	439
BOATS:	
Taxed as personal property	745
BOND ELECTIONS:	
Special Tax School District	928
Wife not eligible to vote	646
BONDHOLDERS PROTECTIVE COMMITTEE:	
Not required to qualify under Florida Securities Commission Act	990
BOND ISSUE:	
Board of County Commissioners not authorized to divert proceeds for other purpose	550

BOND ISSUE—Continued	PAGE
Duty Board County Commissioners	525
BOND TRUSTEES:	
Not authorized to grant franchise	778
BOND TRUSTEES OCEAN SHORE IMPROVEMENT DISTRICT:	
Board of Administration not authorized to remit certain money	331
BONDS:	
Acceptable in payment of taxes	530-771
Acceptance in redemption tax certificates	818
Certain duties required	573
Construction of law <i>in re</i> : Payment by County Commissioners	496
Construction Senate Bill 852	357
County, District or municipality may declare class to be accepted for tax certificates	395
Disposition authorized	563
Issuance for School building improvements	378
Municipalities not authorized to accept in payment of taxes	815
1931 Law does not include Federal Land Bank system	1038
No limit to levy of taxes for payment of	945
Procedure with reference to Constables	476
Required for Convict Guards	474
Tax Collection Agency not subject to cancellation	1060
When acceptable in payment of taxes	501
When accepted in exchange for tax certificates become property of State, county or municipality	331
When receivable at par in redemption of land	713
BONDS, BRIDGE:	
Cannot be used for payment of county and State taxes	328
BONDS, COUNTY:	
Funds must be used for purpose designated	527
Method of handling	524
BONDS, DEFAULTED:	
Method of payment	329
BONDS, FIDELITY OR SURETY:	
Order of Court authority in certain matter	332
BONDS, FINE AND COST:	
Construction of statute	749
BONDS, MATURED:	
Procedure to be followed by Tax Collector or County Commissioners	564
BONDS, REFUNDING:	
Application of law	950
BONDS, REFUNDING, OKEECHOBEE COUNTY:	
Application of law <i>in re</i> : Allocation of Gas Tax	329
BONDS, SCHOOL DISTRICT, REFUNDING:	
Law applicable to issuance	869
BONDS, SINKING FUND:	
Must be used for specific purpose	534
BOND, SUPERSEDEAS:	
Status of person during pendency	637

BOUNDARIES:	PAGE
City of St. Augustine	834
Lake Hatchneha	588
Method of dividing excess sections	614
Perdido Bay	875
Two-thirds registered voters in district required to sign petition for change	487
BOX BALL ALLEY:	
License tax of \$10.00 required	981
BREEDING GROUNDS:	
Construction of statute <i>in re</i> : Game, non-game birds and fresh water fish	430
BRIDGE:	
Law valid <i>in re</i> : Apalachicola River	455
State Road Department authorized to purchase Bridge of Lions St. Augustine	453
State Road Department not authorized to purchase across St. Johns River	451
BRIDGE ELECTION:	
County Commissioners authorized to pay expense	1057
BUDGET:	
County Commissioners not authorized to allow compensation for preparing	477
BUDGET, ANNUAL:	
Legal to fix amount to cover traveling expenses of Board members	539
BUILDING AND LOAN ASSOCIATIONS:	
Intangible tax law require return to be made	901
Interpretation of law	282
Law binding upon withdrawing members	274
Not authorized to receive funds on straight deposit account basis	298
State Comptroller has supervision and may appoint Liquidator	1008
Withdrawal investing stockholder	750
BUILDING CONTRACTORS:	
License tax required	712
BURIED PROPERTY:	
Method to pursue for doing experimental work	985
BUS AND TRUCK COMPANIES:	
Not liable for corporation tax	835
BUSSES:	
License tax, when entitled to refund	383
BUSSES AND TRUCKS:	
Constitution prohibits levying ad valorem tax	674
BUSSES, SCHOOL:	
When for hire license tag required	386
BUTTERMILK:	
Not necessary to show on label state where produced	341
Tag must show specific class	344

C

CALVES:	PAGE
Marks, brands and sale, application of law	1030
CAMPAIGN ADVERTISEMENT:	
Display of moving picture slides, billboards or electrical signs not authorized	947
CAMPAIGN EXPENSE STATEMENT:	
County Commissioners authorized to omit name of candidate from ballot unless filed	986
CAMPAIGN LITERATURE:	
Certain expense authorized to be paid by county commissioners	660
CANDIDATES:	
Advertising, not responsible for in certain cases	972
Assessment fee of 3% of amount of compensation of office is levied	975
Campaign advertising, application of law	947
Certain requirements for qualifying inapplicable	944
Certain expenditures not authorized	474
Certain methods of advertising unlawful	926
Clerk Circuit Court authorized to accept expense statement at any time	499
County Commissioners not authorized to place name on General Election Ballot unless nominated in Primary	1021
County Commissioners authorized to omit name from ballot if campaign expense statement not filed	986
Duty County Commissioners to place names on ballot	589
Expense statement and filing fees	493
Fees required and sworn statements to be filed, construction of statute	488
Fees should be based on net amount of compensation	682
Filing campaign expense statement	1039
Filing fee required	493
Grounds of disqualification	498
If certain acts in violation of corrupt practice Act	939
Last day to qualify	588
Limitation of expenditures	560
Manner of nominating and electing	1038
Members County Commissioners and School Board in certain counties should be nominated by districts	556
Minority parties to write in names on ballot stickers illegal	1048
Nomination	659
Prerequisite for having name placed on General Election ballot	958
Promise to refund to county any part of compensation unlawful	925
Publication of Jury list not in violation Corrupt Practice Act	989
Qualification, application of law	991
Qualification and certifying names of Circuit Judges or State Attorneys in certain cases	237
Retired Army officer may qualify	935

CANDIDATES— <i>Continued</i>	PAGE
Special Tax School District Trustee must be qualified elector	602
When expense statements not required to be filed	559
When name cannot be printed on General Election Ballot	900
When not eligible to run	652
When not required to file expense statements	499
When receiving same number of votes neither elected	597
When refund of qualification fee not authorized	240
CAPITAL STOCK TAX:	
Construction, when corporation inactive	839
CELO SECURITIES COMPANY:	
Application of Florida Securities Commission law <i>in re</i> : Stocks, bonds, securities and assignments	967
CEMETERY LOT: .	
When deed not subject to documentary stamp tax Act	1000
CENTURY OF PROGRESS COMMISSION (Letters to)	353
CENTURY OF PROGRESS EXPOSITION:	
Certain funds and exhibits authorized to be used	354
CERTIFICATES OF INDEBTEDNESS:	
Special Tax School Districts not authorized to issue bonds to pay	536
CERTIFICATES OF NOMINATION:	
Not authorized under statute	245
CERTIFIED CARRIERS:	
Entitled to obtain motor truck license for six months	896
CHAIN STORES:	
Municipalities may impose 25% of state tax	722
CHAIN STORE LAW:	
License tax penalty applies to years 1931-32	279
Subsequent law repealed	282
Restaurants, cafes, etc., not subject to	893
Transfer of licenses	921-922
CHAIRMAN:	
Board of Accountancy authorized to elect	408
CHAMPERTY AND MAINTENANCE:	
Common law in force in Florida	892
CHICKENS:	
Owner not prohibited from bringing into State	1009
CHIEF OF POLICE:	
Lawful to accept fees from Sheriff	758
When entitled to fees	719
CHIEF TRAFFIC OFFICER	719
CHILDREN:	
Not permitted to engage in certain employment	1040
Not required to pay fishing and hunting license tax	430
School fund cannot be used to feed	849
When under jurisdiction of Juvenile Court	371
CHURCH CORPORATIONS:	
Not exempt from documentary Stamp Tax Act	396

CIGARETTE ROLLING MACHINES:	PAGE
Manufacture and sale not prohibited	838
CIRCUIT COURT CALENDAR	14
CIRCUIT COURT JUDGES	355
Impeachment charges, method of procedure	762
Term of Office in Twenty-fourth Judicial Circuit	946
CITIZEN:	
Requirement to become	857
CITIZENSHIP, DOMICILE:	
Moving away does not necessarily change	942
Not lost under certain circumstances	578
State of Florida	1036
When entitled to	935
CITRUS AND OTHER FRUIT SYRUPS:	
If manufacture and sale in violation of Prohibition law	930
CITRUS FRUIT JUICES:	
When law does not prohibit manufacture	577
CITIES:	
Authority to assess automobiles for taxation	724
Authorized to regulate weight or load of automobiles while op- erated on streets	722
Bill in Chancery proper proceeding for foreclosing tax certificates	832
Discounts on payment of taxes optional	725
Duty tax exemptions	727
License tax to be collected	727
Not authorized to make deductions in excise tax on electricity	894
CITIES AND TOWNS:	
Annexation of territory, application of law	919
Entitled to one-half Road and Bridge Tax	477
Money to be received from Special Road and Bridge taxes, law construed	729
Prohibited from levying tax on fish industry	390
When one-half of taxes Special Road and Bridge Districts to be paid to	508
CITY ATTORNEYS:	720
CITY CLERKS:	724
CITY COUNCILS	728
CITY COMMISSIONERS:	
Not authorized to repeal any Act of Legislature	377
CITY OF EUSTIS:	
Charter powers	730
CITY OFFICIALS	719
CITY PROPERTY:	
When exempt from taxation	682
CITY TAX COLLECTORS	729
CITY RECORDERS	728
CITY TREASURERS	729

	PAGE
CIVIL COURTS OF RECORD, <i>Judges</i>	360
CIVIL RIGHTS:	
Restoration in certain cases	769
CLAMS AND OYSTERS:	
Leasing and cultivating water bottoms for growing	390
CLERKS CIRCUIT COURT	464
Accounting should show certain fees and commissions	557
Construction of statute <i>in re</i> : Commissions	490
Construction of statute <i>in re</i> : Fees	489
Fees allowed for making report of jurors to Comptroller and how paid	484
Not authorized to accept expense statement from candidate	499
Payment of per diem for court attendance	512
Prohibition law, jurisdiction	57
Salary	564
When not entitled to fees for transporting liquor in Court Room	481
CLERK CRIMINAL COURT OF RECORD:	
Custodian of Liquor seized	468
CLIENT:	
Has right to interview prisoner	756
CLOSED BANKS:	
Application of Freezing Act	917
Liquidation of accounts <i>in re</i> : Counties and municipalities, Rule of set-off	267
COFFINS:	
Merchant not required to pay undertaker's license	704
COLLATERAL SECURITIES:	
Documentary Stamp Tax, application of law	953
COLLECTION AGENCIES:	
License Tax	261-744
COLLEGE PROPERTY:	
When not exempt from taxation	685-777
COMMERCIAL FEED STUFF MIXTURES:	
Collection of inspection tax on private formula	336
Registration of special formula	337
COMMISSIONER OF AGRICULTURE (Letters to)	336
<i>Agricultural Enumerators:</i>	
Expenses of Printing Blanks and salary payable from certain funds	345
<i>Arsenic:</i>	
Law construed as to Use	338
<i>Buttermilk:</i>	
Not necessary to show on label State where produced	341
Tag must show specific class	344
<i>Commercial Feed Stuff Mixtures:</i>	
Collection of Inspection Tax on private formula	336
Registration of special formula required in certain cases	337

COMMISSIONER OF AGRICULTURE—Continued	PAGES
<i>Cream or Milk:</i>	
License tax required of dealers	346
<i>Dairy Inspection Act:</i>	
Commissioner of Agriculture authorized to promulgate rules and regulations	340
<i>Enumerators, Agricultural:</i>	
Expense of printing blanks and salary payable from certain funds	345
<i>Farm Products:</i>	
Producers exempt from license tax	344
<i>Feed Stuffs:</i>	
Certain rules and regulations not enforceable	345
<i>Feeding Stuff:</i>	
Inspection tax required	336-337
<i>Fertilizer Shipments:</i>	
When samples may be drawn—when interstate character lost and at what time and point State officers may exercise authority	340
<i>Gasoline:</i>	
Exemption of inspection fee of one-eighth cent not authorized	343
<i>Grove Products:</i>	
Producers exempt from license tax	344
<i>Inspection Fee:</i>	
One-eighth cent on gasoline not authorized	343
<i>Inspection Tax:</i>	
Commercial feeding stuff mixture subject to	336-337
When Kerosene not subject to	337
<i>Inspectors:</i>	
Authorized to prohibit sale of milk or cream in certain cases	346
Not authorized to interrupt transportation of milk or cream	346
<i>Kerosene:</i>	
Collection of inspection tax not required in certain cases	337
<i>License Tax:</i>	
Dealers of milk or cream required to pay	346
Producers of farm and grove products exempt	344
<i>Milk:</i>	
Duties Commissioner of Agriculture, construction of law	342
Inspectors authorized to prohibit sale in certain cases	346
Inspectors not authorized to interrupt transportation	346
<i>Milk or Cream:</i>	
License tax required of dealers	346
COMMISSIONS:	
Construction of statute	490
Procedure with reference to Constables	476
Regular fee required	224
When Tax Assessor entitled to payment	693
COMMITMENTS:	
When unnecessary to be issued	566
COMMITTING MAGISTRATES:	
Entitled to costs	617

COMMON CARRIERS:	PAGE
When agents or officers authorized to carry pistols	817
When aeroplanes or seaplanes subject to license tax	695
COMPENSATION:	
Board County Commissioners	491
Trustees County Bonds	375
COMPILED STATEMENT OF ALL CASES HANDLED FROM	
JANUARY 1, 1931, TO JANUARY 1, 1933	53
COMPTROLLER (Letters to)	248
Advertising:	
Amount allowed to be charged for delinquent tax list	286
Charges in re: Delinquent taxes	265
Appropriation Bill:	
Construction in re: Unexpended balance	315
Construction of Certain Provisions	272
Banks, Closed:	
Claims must be sworn to and filed with liquidator	265
When statute of limitations begins to run against stockholders	288
Banks, State:	
Authorized to limit withdrawals by depositors	288
May rediscount its paper or borrow money	294
Bank Stock:	
Construction of law in re: Situs of Taxation when owned by non-resident	315
Bond:	
Clerk Criminal Court of Record	317
Budget Commission:	
Racing Commission to make return and report	317
Building and Loan Associations:	
Authorized to receive funds on straight deposit account basis	298
Interpretation of Law	282
Law Binding upon withdrawing members	274
Busses and Trucks:	
Mileage tax, application of law	292
Chain Store Act:	
Subsequent law repealed	282
Chain Stores License Tax:	
Penalty applies to years 1931-32	279
Cities and Towns:	
Auto transportation mileage tax, construction of statute	302
Clerk Circuit Court:	
Tax sale certificates, transfer and assignment, interpretation of law....	271
Closed Banks:	
Claims must be sworn to and filed with liquidator	265
Liquidation of accounts in re: Counties and municipalities—Rule of set-off	267
Collection Agencies:	
License tax	261

COMPTROLLER—Continued	PAGE
<i>Commissioner of Revenue:</i>	
Entitled to costs and expenses, <i>in re:</i> Inheritance or Estate taxes	293
<i>County Board of Public Instruction:</i>	
Law of set-off does not apply	268
<i>County Budget:</i>	
County Commissioners authorized to transfer funds	630
County Commissioners, <i>in re:</i> Handling funds	308
<i>County Commissioners:</i>	
Authorized to transfer funds from one fund to another	630
Handling county funds	308
Not authorized to withdraw certain funds	268
Not authorized to employ attorney in certain cases	304
<i>County Funds:</i>	
Method of Handling	308
<i>County Judge:</i>	
Compensation	303
<i>County Officers:</i>	
Application of statute <i>in re:</i> Certain fees	313
Construction of statute <i>in re:</i> Fees	311
Fees earned during incumbency but paid after retirement	312
<i>Court Reporters:</i>	
Payment of Salary in certain cases	280
<i>Criminal Court of Record:</i>	
Bond of Clerk	317
<i>Delinquent Tax List:</i>	
Amount allowed to be charged for printing	286
Charges for publishing lists in certain cases	265
<i>Delinquent Taxes:</i>	
Construction of statute <i>in re:</i> Redemption	278
Court opinion affects sale of land in Everglades Drainage District	297
<i>Documentary Stamps:</i>	
When required of mutual building and loan associations	278
<i>Documentary Stamp Tax Act:</i>	
Assignment of mortgages and certificates of deposit, etc.—Subject to	305
Construction <i>in re:</i> Federal Land Banks	281
Effective Date	310
Interpretation	274
<i>Domestic Corporations:</i>	
When waiver of claims for taxes on stock owned by non-resident de- cedents should issue	283
<i>Everglades Drainage District:</i>	
Court opinion affects sale of lands for delinquent taxes	297
Taxes—Publication of lists	265
State and county taxes may be accepted	284
When land subject to state and county taxes	290

COMPTROLLER—Continued

PAGE

Fees:

County officers—application of statute	313
County officers—earned during incumbency but paid after retirement	312
Construction of statute <i>in re</i> : County officers	311
When paid to Florida Securities Commission cannot be returned	302

Fishing Boats:

If subject to gasoline tax	300
----------------------------------	-----

Flood Control Taxes:

Publication of lists	256
----------------------------	-----

Florida Securities Commission:

Fees paid when application filed not returnable	302
---	-----

Gasoline:

Application of law <i>in re</i> : Purchase made by S. A. L. Ry.	305
Application of law <i>in re</i> : Seaboard Air Line Railway	301
Construction and application of state statutes	255
Credit on sales for export	307
Fishing boats, if subject to	300
Post Exchange at Fort Barrancas not subject to tax	300
When not subject to State tax	257
When special taxing districts entitled to their pro-rata share	290
When state exempt from payment	295
Tax Fund—Prerequisite for road and bridge district participation	259
Storage tax—application of law	295

Inheritance or Estate Taxes:

Commissioners of revenue entitled to costs and expenses	293
Construction of law	292

Laws:

Claim of newspapers for publishing	299
--	-----

Legal Advertising:

Amount allowed to be charged for delinquent tax list	286
--	-----

License Tax:

Chain stores—penalty applies to years 1931-32	279
Collection agencies	261
Radio Dealers required to pay	314
Refrigerators and tank cars, construction of law	251

Liquidators:

Authorized to appoint for banks, trust companies and building and loan associations	1008
Claims of closed banks must be sworn to and filed	265
Equity rule of set-off	267
Law of set-off does not apply in claim of board of public instruction, Dade County	268
Pro-rata part of expense should be borne by trust estates	270

Mileage Tax Act:

Amount tax assessable against certain trust companies	300
Application <i>in re</i> : Tax on trucks and busses	292

COMPTROLLER—Continued	PAGE
Comptroller authorized to appoint agents to enforce	287
Construction of Court's opinion	309
Construction <i>in re</i> : Amount due cities and towns	302
Construction <i>in re</i> : Travel bureaus	294
Construction motor transportation <i>in re</i> : Computing and collecting	248
Motor transportation division may expend necessary funds for proper administration	273
Railroad Commission proper party to enforce	279
<i>Motor Highway Carriers Mileage Tax Act</i> :	
Railroad Commission proper party to enforce	279
<i>Motor Transportation Mileage Tax Act</i> :	
Application <i>in re</i> : Tax on trucks and busses	292
Comptroller authorized to appoint agents to enforce	287
Construction <i>in re</i> : Travel bureaus	294
Construction of law as to computing and collecting	248
Construction of Section 17 of law, <i>in re</i> : Distribution mileage tax to cities and towns	302
Motor transportation division may expend necessary funds for proper administration of law	273
Tax due by trucking companies	300
<i>Mutual Building and Loan Associations</i> :	
When documentary stamps required	278
<i>National Banks</i> :	
Construction of law <i>in re</i> : Situs of taxation for stock owned by non-residents	315
<i>Newspapers</i> :	
Claim for publishing laws	299
<i>Non-Residents</i> :	
Construction of law <i>in re</i> : Situs of taxation for stock	315
When waiver of claims for taxes on stock owned by decedents should issue	283
<i>Occupational License Tax</i> :	
Duty to collect from oil company	698
<i>Preferred Claims</i> :	
Extent of participation	274
<i>Promissory Note</i> :	
Not eligible collateral when given by school board	311
<i>Racing Commission</i> :	
Law requires return and report to Budget Commission	317
<i>Radios</i> :	
Dealers required to pay license	314
<i>Railroad Commission</i> :	
Proper party to enforce motor highway carrier mileage tax act	279
<i>Refrigeration and Tank Cars</i> :	
Construction of Law <i>in re</i> : License tax	251
<i>Refund</i> :	
Tax sale certificates	314

COMPTROLLER—Continued	PAGE
<i>Road and Bridge Districts:</i>	
Participation Gasoline Tax Fund	259
<i>Saint Johns Terminal Co.:</i>	
Tax assessments	276
<i>Salary:</i>	
State Attorney entitled to until successor duly qualified	267
<i>School Board:</i>	
Promissory note not eligible as collateral	311
<i>Seaboard Air Line Railway:</i>	
Application of Gasoline Tax Law	301-305
<i>Secretary of State:</i>	
State warrants should be returned to Comptroller	296
<i>Special Taxing Districts:</i>	
When entitled to pro-rata share gasoline tax	290
<i>State:</i>	
When exempt from payment gasoline tax	295
<i>State and County Taxes:</i>	
When lands in Everglades Drainage District subject to	290
May be accepted when Everglades Drainage taxes not proffered	284
<i>State Attorneys:</i>	
Entitled to salary until successor duly qualified	267
<i>State Banks:</i>	
Authorized to limit withdrawals by depositors	288
Liability of shareholders	262
May re-discount its paper or borrow money	294
<i>State Warrant:</i>	
Secretary of State should return to Comptroller	296
<i>Stockholders:</i>	
When statute of limitations begins to run	288
<i>Supreme Court Justices:</i>	
Salaries	277
<i>Taxation:</i>	
National Bank stock owned by non-residents	315
<i>Tax Assessments:</i>	
Property St. Johns Terminal Co., Duval County	276
<i>Tax Assessors:</i>	
Construction of law—duty in re: Tax sale certificates	251
When not entitled to compensation	275
<i>Tax Collector:</i>	
Construction of law—duty in re: Tax sale certificates	251
Not entitled to commissions in certain cases	263
<i>Tax:</i>	
Gasoline, construction and application of State statutes	255
Gasoline not subject to	257
<i>Taxes:</i>	
State and county may be accepted when Everglades Drainage District not proffered	284

COMPTROLLER--Continued

PAGE

Tax Redemption:

Construction of statute	279-291
-------------------------------	---------

Tax Lists:

Publication of	256
----------------------	-----

Tax Sale Certificates:

Authority for refunding to holder amount received by state, etc.	314
Amount required and method of redemption	248
Certain procedure for foreclosure not authorized	260
Comptroller without authority to cancel in certain cases	253
Construction of law <i>in re</i> : Duty tax collector and tax assessor	251
Construction of law <i>in re</i> : Legality of notice	259
Fee of clerk Circuit Court for transfer and assignment, interpretation of law	271
Foreclosure, application of law	271
Payment of costs and expenses incident to suits	264
Rules of law as to redemption	258

Tax Sale List:

No authority to pay certain claim	297
---	-----

Taxes, State and County:

When lands in Everglades Drainage District subject to	290
---	-----

Travel Bureaus:

Construction Motor Transportation Mileage Tax Act	294
---	-----

Trucks:

Construction of law <i>in re</i> : Mileage tax	309
--	-----

Trucks and Busses:

Application of law <i>in re</i> : Mileage tax	292
---	-----

Trust Estates:

Pro-rata part of liquidator's expense should be borne	270
---	-----

CONSTABLES:

Construction of statutes, <i>in re</i> : Appointment of Special by Justice of Peace	504
Costs	617
Duties and fees, <i>in re</i> : Committing prisoners to Jail	633
Entitled to costs for returning prisoner from another county	637
Fees	504-505-520-630
Fees and mileage	998
New Bond	963
Necessary procedure with reference to Bond and Commission	476
Not authorized to act as collection agency	619
Returning prisoner from another county	506

CONSTITUTION:

Construction Sec. 11, Article IX	223
--	-----

CONSTITUTIONAL AMENDMENT:

Does not affect Board's authority to borrow money	541
---	-----

CONTRACTORS:

License tax, statute construed	696
License tax required for building	712

CONTRACTORS—Continued	PAGE
Member of Board County Commissioners not authorized to enter into for benefit of himself	550
CONTRACT CARRIERS:	
Exemption from mileage tax	789
Validity when signed by dope fiend	735
When void	540
CONVICTS:	
Authority of County Commissioners to hire out	496
County Commissioners not authorized to employ on highways and streets within incorporated cities	636
Funds from which discharge fee should be paid	627
State Road Department not authorized to return to State Prison Farm	452
CONVICT GUARDS:	
Bonds required:	474
CO-OPERATIVE ASSOCIATIONS:	
Authorized to transact business under Chapter 7384, Acts of 1917....	235
CORPORATIONS:	
Application of law <i>in re</i> : Forfeiture of charter privileges	839
Capital Stock Tax	796
Capital stock tax required	802
Certain deductions in filing fees allowed	233
Construction Excise Tax Law, <i>in re</i> : Certain deductions by city.....	894
Certificate of incorporation	242
Construction of law, <i>in re</i> : report and tax	1060
Construction Capital Stock Tax when inactive	839
Dividends and documentary stamps	955
Filing fees required	242
If not legally dissolved liable for Capital Tax	782
Individual cannot do business as corporate entity	771
Method of conveying property and assets	1064
Not authorized to practice dentistry	734
Not authorized under law to have two separate names	232
Not exempt from taxation	943
Optometrist may be employed	415
Preacher's Relief Fund	397
Reports and filing fees	782
Required to file report and pay fee	844
Senate Bill 734, Chapter 14677 not in conflict with Section 4268, C. G. L.	231
Section 11 of Chapter 14677 refers to fees to be paid in connection with report required by Section 1	234
Under S. B. 734 Chapter 14677 Certain tax required	232
When each is a separate corporation entity each required to pay filing fees	233
When exempt from ad valorem tax	244

<i>CORPORATIONS—Continued</i>	PAGE
When exempt from payment filing fee tax	812
When exempt from taxation	671
When liable for only one excise tax	885
When property not exempt from taxation	562
When stock book should bear documentary stamps	894
When suspended privileges and charter rights re-established, all taxes due must be paid	243
Wording of charter does not prohibit filing	247
<i>CORPORATION ACT:</i>	
Capital stock reduction	823
<i>CORPORATION ACT, CHAPTER 14677:</i>	
Suggested amendment	779
<i>CORPORATION CHARTER TAX:</i>	
Construction of law	900
<i>CORPORATION TAX:</i>	
Bus and truck companies not liable	835
Holding companies required to pay	240
Secretary of State within rights to refuse to refund payment	770
<i>COUNTY:</i>	
License tax on automobiles	554
May declare class of bond to be accepted for tax certificates	395
Method of paying witness fees	397
When prosecuting prisoner liable for cost of maintaining	467
<i>COUNTY AGRICULTURAL ENUMERATORS:</i>	
Term of office	957
<i>COUNTY COMMISSIONERS:</i>	
Letters to	547
Adjustment of accounts Special Tax School District	552
Authority to hire their convicts	496
Authority vested to convey county property	516
Authorized to appoint attorney for Board, also Prosecuting Attorney	464
Authorized to care for and provide for the poor and indigent of county	500
Authorized to consolidate Justice of Peace Districts	507
Authorized to distribute funds received under provisions of Racing Act	476
Authorized to employ person to work with Federal Government.....	555
Authorized to grant permit to carry pistol	851
Authorized to pay certain election expense	660
Authorized to pay expense Bridge Election	1057
Authorized to pay Mother's Aid	605
Authorized to pay necessary expense for care indigent children.....	626
Authorized to reduce salary Supervisor of Registration	647
Authorized to select newspaper for publication delinquent tax lists	555
Candidates should be nominated by districts	556
Certain funds and exhibits authorized to be used at Century of Progress Exposition	354

COUNTY COMMISSIONERS—Continued

PAGE

Certain funds authorized to be transferred for payment Sheriff's costs	630
Clerk's salary	564
Compensation	491
Compensation in Madison County	381
Construction of law, <i>in re</i> : County depository	511
Construction of law, <i>in re</i> : Payment certain bonds	496
Construction of law, <i>in re</i> : Salary	551
Construction of law, <i>in re</i> : Transfer of certain moneys for use of Florida Century of Progress Commission	933
Construction of Primary Election Law, <i>in re</i> : Certain expenses.....	650
Disposition of certain bonds	563
Duties, <i>in re</i> : Certain bonds under Chapter 15054, Acts of 1929.....	780
Duties, <i>in re</i> : Delinquent county officers	560
Duties, <i>in re</i> : Enforcing payment of past due coupons on certain bonds	319
Duty, <i>in re</i> : Money received from certain bond issues	525
Duty, <i>in re</i> : Tax assessment roll	692
Duty to place both names of candidates on ballot	589
Election Inspectors should be appointed	639
Expense Probation Officer left to discretion of Board	553
Feeding prisoners	399
Feeding, supervision and control of convicts	380
Fees County officers, application of law	702
Interpretation of Racing Act, <i>in re</i> : Disposition of money received....	970
Mandatory duty to certify to Tax Assessor millage for county general school fund	517
Not authorized to allow compensation for preparing Budget	477
Not authorized to dispense with services Prosecuting Attorney.....	547
Not authorized to employ attorney to make collection in certain cases	304
Not authorized to employ convicts on highways and streets	636
Not authorized to employ county convicts	529
Not authorized to enter into contract for benefit of themselves.....	550
Not authorized to divert proceeds bond issue for other purpose.....	550
Not authorized to make donations to American Legion Home.....	467
Not authorized to promise to pay interest on county warrants.....	515
Not authorized to reduce salary Superintendent Public Instruction	607
Not authorized to reduce valuations of lands	690
Not authorized to withdraw certain funds	268
Not entitled to mileage for inspection roads and bridges	486
Payment certain attorney's fees authorized	1058
Revision registration books required	498
State Auditor authorized to reject item in report	671
Three sets ballot boxes required	659

COUNTY COMMISSIONERS— <i>Continued</i>	PAGE
When authorized to reimburse State Attorney for funds expended	562
When expenses authorized to be paid	554
When office deemed vacant	865
Two-thirds registered voters in district required to sign petition for change in boundaries	487
COUNTY FUNDS:	
Method of handling	308
COUNTY JUDGE, (Letters to)	565
Accounts rendered by guardians should be recorded	574
Application of law, <i>in re</i> : Jurisdiction, punishment and imprisonment	584
Certain duties required, <i>in re</i> : Bonds	573
Clerk not authorized to perform marriage ceremony	567
Compensation authorized by Chapter 14739, Acts 1931	303
Cost bills	793
Costs should be required in advance	492
Entitled to fees when approved by County Commissioners	484
Fees	568-572-803-902
Fees allowed, <i>in re</i> : Marriage license	951
Fees, certain cases	808
Fees, criminal cases	469
Fees, lunacy cases	566
Guardian required to make report	778
In case misunderstanding as to fees, matter should be referred to State Auditor	575
Jurisdiction, <i>in re</i> : Prohibition law	572
Law does not apply to fees in Hillsborough County	576
List occupational license tax required to be published	571
Method of filling unexpired term	585
Not authorized to charge for taking oath absentee voter	584
Not authorized to charge for recording final report of guardian	779
Not authorized to declare local fish law unconstitutional	571
Clerk not authorized to perform marriage ceremony	567
Warrants to be issued in duplicate	618
When authorized to hold inquest	398
When Commitments unnecessary to be issued	566
When costs should be deposited in advance	575
When entitled to collect fees from county	1061
COUNTY JUDGE'S COURT:	
Rule Day—Fees	574
CO-OPERATIVE MARKETING CORPORATIONS:	
Florida Securities Commission Act does not affect	782
COMPULSORY SCHOOL ATTENDANCE LAW:	
Superintendent responsible for enforcement	733
CONVICTION FEES:	
When authorized to be paid Prosecuting Attorney	589
CORONER:	
Fees for attending inquest	626

CORONER—Continued	PAGE
Mileage fees allowed	568
Necessity for inquest to be determined	475
CORRUPT PRACTICE ACT:	
Decrease in salary Superintendent Public Instruction	612
If certain acts of candidate violative	939
Publication of Grand Jury Report not in violation	989
Violation of	933
COSTS:	
Cases prosecuted before Justice of Peace, requirement of pre- payment under Section 8490	508
Committing Magistrate entitled to	617
Construction of statute, <i>in re</i> : Where no indictment found	464
State Live Stock Sanitary Board authorized to pay one-half	436
When Justice of Peace and County Judge should require in advance	492
When should be required to be deposited in advance	575
COST BILLS:	
Method of collecting certain cases	958
County Judge	793
COUNTIES, COUNTY SEATS AND COUNTY OFFICERS	12-13
COUNTIES:	
Race track money to be equally divided	935
COUNTY AND HOME DEMONSTRATION AGENTS:	
Method of employment	362
COUNTY ATTORNEYS, (Letters to)	508
COUNTY BOARD OF PUBLIC INSTRUCTION:	
Amount should be fixed in Budget to cover traveling expenses	539
Application of statutes, <i>in re</i> : Authority to borrow 80 per cent of budget requirement	1048
Authorized to appoint school teachers	644
Authorized to borrow 80 per cent expected revenue	603-605-823
Authorized to employ janitor for school building	1032
Candidates should be nominated by districts	556
Constitutional amendment does not affect authority to borrow money	541
Contracts for transportation of school children	613
Diversion of funds	870
Employs and fixes salary of teachers	848
Has power to use school funds for maintaining and operating sum- mer schools	539
Must act in good faith when rejecting nominations of teacher made by Trustees	611
Not authorized to exceed Budget	825
Not authorized to issue certificates in payment of teachers	847
Not authorized to issue due bills	733
Sinking Fund Bonds must be used for specific purpose	534
Transportation of pupils and costs therefor	983
When authorized to employ Public Health Nurse	531

COUNTY BOARD OF PUBLIC INSTRUCTION— <i>Continued</i>	PAGE
When authorized to invest Sinking Funds	613
When motor vehicles exempt from license tax	350
When rubber stamps may be used	537
COUNTY BONDS:	
Acceptable in payment of taxes	771
Funds must be used for purpose designated	527
Method of handling	524
COUNTY BOND TRUSTEES:	
Application of law, <i>in re</i> : Fees	402
COUNTY BUILDINGS—ROADS AND BRIDGES:	
Duty of County Commissioners and State Board of Health.....	222
COUNTY BUDGET:	
County Commissioners authorized to transfer funds.....	252
County Commissioners not authorized to allow compensation for preparing	477
Estimates of expenditures, application of law	1017
COUNTY CONVICTS:	
Authority of County Commissioners to hire out.....	496
Commissioners not authorized to employ	529
County Commissioners have control and supervision	380
Fund from which discharge fee should be paid	627
COUNTY COURTS:	
Law requires report to show salary of Judge	569
Jurisdiction for removal delinquent tenants	837
Informations—Authority to refuse to file in cases bound over from committing magistrate	587
COUNTY DEPOSITORY:	
Construction of law <i>in re</i> : Requirement of interest payments— Surety Bonds authorized	511
COUNTY DETECTIVE:	
Termination of office	767
COUNTY EXECUTIVE COMMITTEE:	
Act governing construed	1065
Expense statements not required to be filed	559
COUNTY FUNDS:	
Construction of Chapter 15759, <i>in re</i> : Transfer of moneys received from gasoline tax	558
When banks required to pay interest	892
COUNTY GENERAL SCHOOL FUND:	
Duty County Commissioners to certify millage to tax assessor	517
COUNTY JAIL:	
Carbide or gas lighting system	631
COUNTY OFFICERS:	
Application of statute <i>in re</i> : Certain fees	313
Certain expense not authorized	957
Construction of law, <i>in re</i> : Expenditures for certain services	932

COUNTY OFFICERS— <i>Continued</i>	PAGE
Construction of statute <i>in re</i> : Fees	311
Construction of statute <i>in re</i> : Reports	509
Contrary to spirit of law for one person to hold two positions	966
Delinquent, <i>in re</i> : Duties County Commissioners	560
Fees earned during incumbency but paid after retirement	312
Fees required	400-1
Fees uncollected inure to office after term of official expires	501
Interpretation of statute <i>in re</i> : Expenses	702
Method of collecting in certain cases	958
Not authorized to pay private auditor from office funds	486
Not permitted by law to hold two offices	761
Questions as to cost bills should be referred to State Auditor	575
Right to receive commission on legal advertising	741
Sentence imposed valid	836
When premiums on bonds should be paid from county treasury	515
COUNTY PROPERTY:	
Authority vested in County Commissioners to convey	516
Leased property not exempt from taxation	480
Not subject to levy and seizure to satisfy judgment; how judgment may be enforced by mandamus	472
COUNTY PROSECUTING ATTORNEYS (Letters to)	586
Board not authorized to dispense with service	547
COUNTY PUBLIC SCHOOL FUNDS:	
Expenditure authorized for vocational purposes	348
Can be used only for maintenance of public free schools	611
May be used for rebuilding school house	543
Not authorized to be used for administrative or supervisory work	418
Only county school officers can be paid from	614
County Board of Public Instruction responsible for expenditures	351
COUNTY SCHOOL OFFICERS:	
County School Fund can only be used for payment of	614
COUNTY SOLICITOR:	
Professional ethics governing	590
COUNTY SUPERINTENDENT OF PUBLIC INSTRUCTION (Letters to)	594
Board not authorized to reduce salary	607
Construction of law <i>in re</i> : Compensation	372
Construction of law <i>in re</i> : Salaries	600
Duty <i>in re</i> : Payment of principal and interest Special Tax School District Bonds	601
Salary	534-768
Salary to be paid under 1931 law	602
School board not authorized to reduce salary	603
COUNTY SUPERINTENDENT OF PUBLIC INSTRUCTION— <i>Continued</i>	PAGE
Use of rubber stamp	594
COUNTY SURVEYOR (Letters to)	614
Question as to qualification must be decided by court	247

COUNTY TREASURY:	PAGE
When premiums on bonds of county officials should be paid	515
COUNTY WARRANTS:	
County Commissioners not authorized to promise to pay interest	515
COUPONS:	
Procedure when lost	775
COURTS:	
Authorized to change or reduce sentence	623
Commitment boys to Industrial School	360
Legislature only can abolish	980
Person charged with crime may defend himself	938
COURT ATTENDANCE:	
Four dollars per diem allowed sheriffs	631
COURT CLERKS:	
Construction of statute <i>in re</i> : Fees	489
COURT DOCKET:	
No authority for removing out of Court's jurisdiction	622
COURT REPORTER:	
Mileage allowed	355
Payment of salary in certain cases	280
CRAWFISH:	
Importation and reshipment	940
When unlawful to possess or transport	392
CRIMINAL:	
May represent himself in Court proceedings	938
CRIMINAL CASES:	
Construction of statute <i>in re</i> : Appeals	623
Disposition of papers filed with Justice of Peace	468
Fees County Judge	469
CRIMINAL COURTS OF RECORD (Letters to)	360
Clerk	504
Bond of Clerk	317
Jurisdiction	881
Terms of office	941
CRIMINAL LAW:	
Procedure	922
CRIMINAL PROSECUTIONS:	
Payment of worthless checks does not release person	625
CRIPPLES:	
Exemption peddler's license should be granted in each county where goods sold	896
Not exempt from payment of barber's examination fee	856
CUTTING TIMBER:	
Method to pursue to prevent cutting from State lands	586

D

	PAGE
DAIRY INSPECTION ACT:	
Commissioner of Agriculture authorized to promulgate rules and regulations	340
DANCE HALL:	
When license tax required	577
DANCE HALLS AND NIGHT CLUBS:	
Application of law, <i>in re</i> : Occupational license tax	708
DEALER:	
Definition of	845
DEATH CERTIFICATES:	
If certain doctors authorized to sign	416
Who authorized to sign	416
DEATH, PRESUMPTION OF:	
Statute relating to	750
DEFICIENCY DECREE:	
Property not exempt may be sold to satisfy	1005
DEFUNCT BANKS:	
Liability with regard to checks	741
DELINQUENT COUNTY OFFICERS:	
Duties County Commissioners	560
DELINQUENT COUPONS:	
<i>In re</i> : Acceptance in redemption tax certificates	818
DELINQUENT OFFICERS:	
Duty of Comptroller and other officers	591
DELINQUENT TAXES:	
Application of law	785
Charges for publishing lists in certain cases	265
Construction of law, <i>in re</i> : Payment with bonds or delinquent coupons	747
Construction of statute, <i>in re</i> : Redemption	278
<i>In re</i> : Acceptance of bonds in payment	787
Last assessment valuation basis for compensation	466
Payment with bonds authorized by law	1009
DELINQUENT TAX LIST:	
Amount allowed to be charged for printing	286
County Commissioners authorized to select newspaper for publication	555
If The Beach Press qualified to publish	956
DELINQUENT TAX SALE:	
<i>In re</i> : Notice	781
DELINQUENT TENANTS:	
County Courts have jurisdiction for removal	837
DEMOCRATIC EXECUTIVE COMMITTEE:	
<i>In re</i> : Proxies	949
STATE—Method of Filling Vacancy	223
DEMOCRATIC PARTY:	
Who declared members	653

DEMOCRATIC PRIMARY:	PAGE
White Democratic voters only allowed to participate	655
DENTAL HYGIENIST:	
Must be graduate from accredited school	874
DENTISTRY:	
Corporation not authorized to practice	734
Interpretation of law	732
Person cannot practice without license	435
DEPENDENTS:	
<i>In re</i> : Tax exemptions	673
DETECTIVE AGENCIES:	
License tax required	997
DETECTIVE AGENCY:	
License tax to be collected by Tax Collector	1001
DISABLED PERSONS:	
<i>In re</i> : Tax exemptions	673
DISABLED WAR VETERANS:	
Application of law, <i>in re</i> : License tax exemption	846
Construction of Constitution, <i>in re</i> : Tax exemption	356
Exempt from payment of license tax	861
Exempt from payment license tax to practice law	846
Granting of license largely matter of practical application	850
Not exempt from payment hunting license	881
Not exempt from payment tax required Barber's Law	881
Tax Collector to decide if entitled to tax exemption	847
When entitled to free license	575
When motor vehicles exempt from license tax	387
DIVORCE:	
Final decree should appear of record	807
Ground and requirements	849
DOCUMENTARY STAMPS:	
Administrative officer not authorized to refuse to file document because of omission therefrom of such stamps	234
All Deeds conveying Florida real estate subject to	979
All Deeds, Mortgages and Assignments subject to	855
All instruments conveying interest in land subject to	840
All notes subject to	832
Amount necessary	924
Amount required on certain mortgages and deeds	494
Amount required on mortgage and deed	482
Application of law, <i>in re</i> : Final decree assignment	907
Application of law, <i>in re</i> : Instruments delivered prior to effective date	1016
Application of law, <i>in re</i> : Transaction involving pledge of collateral securities	953
Assignments of mortgage and certificates of deposit, etc., subject to	307
Assignments of mortgages subject to	851
Bail bonds subject to	1034

DOCUMENTARY STAMPS—*Continued*

	PAGE
Bankrupt estate required to attach to deeds of assignment	1039
Bills of sale require	491
Bonds and deed issued by Church Corporation not exempt.....	396
Bonds and transfers	835
Building and Loan stock	859
Certain bill of sale does not require	945
Certain deeds subject to	862
Certified checks subject to	845
Certificates and assignments of stock subject to	863
Certificates of deposit liable	915
Certificates of deposit subject to	984
Certificates of stock and powers of attorney subject to	828
Certificates of stock subject to	829-1017
Checks not subject to	1006
Conditional sale contracts and assignments subject to	842
Conditional sale contract subject to unless enforced and collected in another State	853
Construction of law, <i>in re</i> : Agreements to sell stock, and member- ship certificates	857
Construction of law, <i>in re</i> : Amount required on lease	1047
Construction of law, <i>in re</i> : Certified checks, certificates of de- posit, cashiers' checks, acceptances and notes	831
Construction of law, <i>in re</i> : Deeds, contracts and mortgages	841
Construction of law, <i>in re</i> : Mortgages and notes	864
Construction of law, <i>in re</i> : Stocks	899
Construction of law, <i>in re</i> : Stocks, bonds, notes transfers — Gov- ernmental agencies not subject to	871
Construction of law	281-912-1016
Crop Lien subject to	853
Effective date of law	310
Exemption not allowed	960
Extension of mortgage on Y. M. C. A. property subject to	1034
Face value or par value of stock determines amount	973
Governmental agencies not subject to	889
Government bonds exempt	915
Instruments executed by Federal Land Bank exempt	878
Interpretation of law	274
Interpretation of law, <i>in re</i> : Instruments filed for record, and duties Clerks Circuit Court	842
Leases require upon fair consideration	974
Leases subject to	487-839
Master's deeds in Federal Court proceedings subject to	953
Master's deed subject to	724-828
Master's deeds subject to—Government Agencies exempt	892
Method for determining amount	906
Method of estimating amount	487

DOCUMENTARY STAMPS—*Continued*

	PAGE
Method of payment <i>in re</i> : Extension of existing obligation	964
Minimum tax ten cents	855
Mortgage assignment and mortgage given as collateral subject to	869
Mortgage executed outside of state covering property in state liable	478
Mortgage foreclosure—Receiver National bank not required to pay	965
Mortgage interest coupons not subject to	893
Mortgage made prior to enactment not subject to	815
Mortgage satisfaction does not require	962
Not applicable in certain cases	1043
Not double taxation to place on deeds and notes	1002
Notes and bonds subject to	1063
Not required on duplicate copy of lease	988
Not required on government bonds	488
Obligations to pay money required	504
Promissory notes subject to	1002
Promissory notes secured by conditional bill of sale subject to	832
Property sold by receivers National banks not exempt	862
Receivers National banks not required to pay from assets of trust in hand	882
Refund of excessive amounts paid not authorized except by legisla- tive act	1028
Re-issue of stock not subject to	378
Renewal notes subject to	841
Report to Comptroller required	481
Retain title contracts require	478
Retain title contract of furniture company subject to	873
Retain title contract subject to	867
Sales agreement subject to	938
Sales contract subject to	891
School board not required to affix to note	609
Sheriff's deeds subject to	1017
Special master's deed requires	987
State agencies not required to pay	819
Stock and agreements of corporations subject to	955
Stock certificates when sold or pledged as collateral liable	908
Stock sold through New York Exchange subject to	895
Stock transfers—Method of attaching stamps	891
Supplemental deed of trust subject to	878
Ten cents per share to be attached to no par value stock in certain cases	980
Transfer of stock subject to	868-1053
Travelers' cheques not subject to	893
Trust deed not subject to if stamps placed on bonds or notes	864
Trust deeds subject to	1009
When chattel mortgage or conditional sale contract subject to	854
When commercial paper signed and payable outside of state subject to	874

DOCUMENTARY STAMPS—Continued	PAGE
When deed to cemetery lot subject to	1000
When mortgages and assignments subject to	824
When mortgages or deeds executed outside of state require	988
When promissory notes of non-residents subject to	855
When required of mutual building and loan associations	278
When required on assignment of Mortgage	485
When required on certain instruments	479
When required on note and mortgage	484-620
When required on stock transfers	359
When stock book of corporation should bear stamps	894
When stock certificates transferred by non-resident subject to	843
Written assignment of wages subject to	885
Written extensions or renewal of notes subject to	854-868
When waiver of claims for taxes on stock owned by non-resident should issue	283
DOPE FIEND:	
Validity of contract signed by	735
DRAINAGE DISTRICTS:	
Application of Chapter 14713, Acts 1931	899
DRAINAGE TAX:	
Certificate No. 5288, valid lien	776
DRINKS:	
When sale prohibited	1027
DRUG STORES, PHARMACY:	
Registration fee	422
DUE BILLS:	
Board of Public Instruction not authorized to issue	733
School board not authorized to issue to teachers	847
School teachers cannot use in payment of taxes	748

E

ELECTION:	
Application of law <i>in re</i> : Commissioners Lake Worth Inlet Dis- trict	1059
Ballot boxes and opening of polls	997
Certain duties and qualifications prerequisite to vote in Special Tax School District	598
Certain persons not qualified to vote in Special Tax School District	599
Construction of law <i>in re</i> : Consolidation Special Tax School Dis- trict	542
Contest	664
Disposition of tally sheets	652
Initiative and referendum	732
Millage not determined	612
Names of candidates minority parties must be written on ballot— Stickers illegal	1048
Prerequisite for calling	1013

ELECTION— <i>Continued</i>	PAGE
Qualification defined	544
Special Tax School District, interpretation of law	751
Special Tax School District, prerequisite to vote	970
Two questions may be submitted on separate ballots	836
Vacancy in state office	1062
Writing names on ballot legal	757
ELECTION BALLOTS:	
Disposition left to governing authority	720
Gum stickers or rubber stamps should not be used	729
ELECTION, BRIDGE:	
County Commissioners authorized to pay expense	1057
ELECTION DAY:	
Duties of Sheriff	642
ELECTION INSPECTOR:	
County Commissioners should appoint	639
Method of selection and time	499
ELECTION LAWS:	
Ballot not permitted to be taken to bedside of voter	662
Construction of	992
Law providing for voting machine in conflict with	961
Voting age, registration and poll tax	959
Voting without paying poll tax violation of	969
ELECTORS:	
Eligibility	527
Fee for publication of list of qualified	1051
Inspectors authorized to assist in marking ballots	528
Marriage to foreign subject does not disqualify	976
Method of qualification	661
Publication of list	665-666
Supervisors of registration required to publish certified list	1045
Suspension of sentence does not remove disqualification	646
When conviction does not disqualify	998
When disqualified	645-829
When re-registration necessary	646
ELECTRIC COMPANIES:	
When liable for only one excise tax	885
ELECTRIC CURRENT:	
Tax due on gross amount	728
ELECTROCUTION:	
Fees allowed sheriffs	628
ELKS CLUB:	
When exempt from taxation	788
EMBALMERS AND UNDERTAKERS:	
Liable for license tax	714
ENLISTED MEN:	
When exempt from payment automobile license tax	352

EVERGLADES DRAINAGE DISTRICT:	PAGE
Court opinion affects sale of land for delinquent taxes	297
EVERGLADES DRAINAGE DISTRICT TAX CERTIFICATES:	
Authority of Trustees I. I. Fund with reference to	458
EXCISE TAX:	
City not authorized to make deduction on electricity	894
When two electric companies liable for only one tax	885
EXECUTIVE COMMITTEES:	
Candidates not required to file expense statement	499
State and County—Duties, <i>in re</i> : Organizing	1006
EXPENSE STATEMENT:	
<i>In re</i> : Filing by candidate	1039
EXPENSES:	
When authorized to be paid to County Commissioners	554
EXTRADITION:	
Method of procuring fugitive from foreign country	917-925
EYEGLASSES:	
Licensed optician only may sell	866
EYEGLASSES OR SPECTACLES:	
Cannot be sold without service of optometrist or physician	984

F

FARM AND GROVE PRODUCTS:	
Georgia farmers exempt from license tax	809-822
Producers only exempt from license tax	784
Right of producer to market free of license	743
When residents of another State may sell without license	818
FARMERS' EXCHANGE:	
When license tax required	704
FEDERAL FARM BOARD:	
Intangible tax—Loans made exempt from	922
FEDERAL GOVERNMENT:	
Quarantine rules should not conflict with	438
FEDERAL LAND BANK SYSTEM:	
Trust law does not include bonds issued by	1038
FEDERAL REVENUE ACT:	
University of Florida Athletic Association not exempt	412
FEED STUFFS:	
Certain rules and regulations not enforceable	345
FEES:	
Allowed tax collectors collecting special district taxes	711
Allowed Clerks of Circuit Court for making report of Jurors to Comptroller, how paid	484
Application of law, <i>in re</i> : County Bond Trustees	402
Application of law, <i>in re</i> : Tax Assessors	692
Certain law does not apply to Hillsborough County	576
Civil cases	620
Construction of statute	489

FEES—Continued

PAGE

Construction of statute <i>in re</i> : Constables	504
Construction of statute <i>in re</i> : Game Commissioner and deputies....	432
County Judges and Justices of the Peace	803
County Judge or Justice of the Peace entitled to when approved by County Commissioners	484
County Judge in criminal cases	469
County officers	1064
County officers, Palm Beach County, required to report	400
County officers, Volusia County	401
Enforcement of Prohibition law by sheriffs	635
Harbor Masters	363
In cases of misunderstandings matter should be referred to State Auditor	575
Justice of the Peace and County Judge	568
Method of payment by County Commissioners	563
Payment to Sheriff for executing warrant where no indictment found	465
Prosecuting Attorney	466-637
Questions answered	505
Recording tax sales	502
Sections 3084, R. G. S., applicable	572
Sheriffs' and Constables'	520-630
Sheriffs', fixed by general law	639
Transporting liquor into court room as evidence	481
Transporting persons committed to Industrial Schools and State Prison by Sheriffs	632
When Chief of Police entitled to	719
When Prosecuting Attorney entitled to	521
When uncollected during term of office automatically inure to office after expiration of term	501-1045
FEES AND DUTIES:	
Harbor Masters and Pilots	352
FEES AND MILEAGE:	
Sheriffs entitled to when returning prisoners from another State....	634
When Sheriffs entitled to	638
FEE OFFICE:	
Certain expense not allowed	625
FERTILIZER:	
Application of statute, <i>in re</i> : Standard, method of determining	427
When samples may be drawn from shipments when interstate charac- ter lost and at what time and point State officers may exercise authority	340
FILING FEES:	
Construction of law, <i>in re</i> : Date of payment	493
Required of candidates	493
FILLING STATIONS:	
Exempt from certain license tax	706

FILLING STATIONS— <i>Continued</i>	PAGE
Not subject to Chain Store Act	859
When five dollars license tax required	889
FINGER PRINTS:	
Method of procedure	798
FIRE ARMS:	
Permit not required to carry by Sheriffs	636
FISH:	
Fresh water, construction of law	430
Dealers owning trucks if subject to two taxes	373
License tax on dealers wholesale and retail differentiated	389
License tax required of dealers	430
When dealers entitled to wholesale license	870
When dealers liable for wholesale and retail license	768
When retail and wholesale dealer's license required	393
When World War veterans exempt from payment of license	389
FISH INDUSTRY:	
Cities and towns prohibited from levying tax	390
FISHING:	
Construction of law <i>in re</i> : Use of nets in certain waters	518
Construction of statute	431
FISH LAW, LOCAL:	
County Judge not authorized to declare unconstitutional	571
FISHING LICENSES:	
Definition of "residents"	565
FLAVORING EXTRACTS:	
When unlawful to sell	999
FLORIDA BUILDING AND LOAN ASSOCIATIONS:	
Not authorized invest funds in stock Federal Home Loan Banks	1051
FLORIDA CENTURY OF PROGRESS COMMISSION:	
Construction of law, <i>in re</i> : Transfer certain moneys	933
FLORIDA SECURITIES COMMISSION ACT:	
Amount of bond, and liability	819
Application of law, <i>in re</i> : Stocks, bonds, securities and assignments of Celo Securities Co.	967
Bondholders protective committee not required to qualify	990
Construction of law	790
Co-operative marketing corporations not affected by	782
Fees paid when application filed not returnable	302
<i>In re</i> : Securities held in escrow	843
Permit not necessary in certain cases	851
When company not required to procure permit	849
FLORIDA STATE CANAL COMMISSION:	
May use State Seal on letterheads	406
Method of selecting officers	824
FLORIDA STATE COLLEGE FOR WOMEN, (LETTERS TO)	362
When Board vested with authority to admit certain students	410
Use of trucks	962

FORCIBLE ENTRY AND DETAINER SUITS:	PAGE
Jurisdiction conferred by Constitution	761
FORD TRUCKS:	
Board authorized to buy	411
FOREIGN BANKS AND TRUST COMPANIES:	
Not authorized to administer estates	1057
FOREIGN CORPORATIONS:	
Required to qualify under Florida law	913
Method of computing charter tax under Chapter 13,640	229
FOREIGN INSURANCE COMPANIES:	
Application of Intangible tax law, <i>in re</i> : Mortgages held for	911
Must comply with Section 6302 C. G. L.	334
FOR HIRE LICENSE:	
Application of law as to municipalities	927
Refund not authorized	382
When refund authorized	383
When required	385
When required for motor trucks	1015
When school busses required to pay	386
FORMER ASSISTANT ATTORNEYS GENERAL OF FLORIDA	8
FORTUNE TELLERS:	
License tax required	1066
FOUNTAIN PENS:	
Unlawful to carry when filled with tear gas	790
FREE HOLDERS:	
Definition	731-800
Millage to be reduced by vote	643
FREE SCHOOLS:	
Application of law	806
FRESH-WATER FISH:	
Construction of law	430
FREEZING ACT:	
Application of law	917
FRUITS AND VEGETABLES:	
<i>In re</i> : License tax for selling	765
FUGITIVES:	
Method of procedure for extradition from foreign country	917

G

GAME:	
Construction of law	430
GAME BIRDS, NON-MIGRATING:	
When land owner within right to kill	567
GAME LAW:	
Definition of non-resident for purpose of license	628
When license and right to hunt forfeited	435
GASOLINE:	
Exemption of inspection fee of one-eighth cent not authorized	343

GASOLINE—Continued	PAGE
Liability of interstate sale to state tax	745
Not exempt from taxation when used for purpose of irrigating and operating tractors in orange groves	225
When liable for tax	984
When not subject to sales or storage tax	1023
When not subject to state tax	257
When subject to storage tax	766
When not liable for state tax	753
GASOLINE STORAGE TAX:	
Application of law	295
School Board liable for	827
GASOLINE TAX:	
Application of law <i>in re</i> : Seaboard Air Line Ry.	301
Application of law <i>in re</i> : Purchases made by Seaboard Air Line Ry.	305
Board of Administration—Interpretation of law <i>in re</i> : Distribution of funds	323, 324
Certain state boards and bureaus exempt	1035
Construction of law <i>in re</i> : Transfer of county funds	558
Construction and application of state statutes	255
Credit on sales for export	307
Fishing boats if subject to	300
Military department exempt	1039
Post exchange at Fort Barrancas not subject to	300
State Board of Forestry not exempt	429
State roads only to participate in distribution	452
When special taxing districts entitled to their pro-rata share	290
When state exempt from payment	295
GASOLINE TAX FUND:	
Prerequisite for road and bridge district participation	259
GENERAL ELECTION:	
Nominee not required to pay any fee	1043
Only name of nominees in primary can be printed on ballot	976
Payment of poll taxes, and publication of list of voters	664
When name of candidate cannot be printed on ballot	900
GENERAL LAW:	
Street tax not governed by	379
GENERAL SCHOOL FUND:	
Commissions for assessing and collecting the ten mills levy provided for—Application of law	1055
Commissions for assessing and collecting ten mill levy provided for— Construction of constitution	347
GENERAL SCOPE OF DUTIES:	
Attorney General	24
GEORGIA FARMERS:	
Exempt from license tax on farm and grove products	822
Not required to pay license tax on farm and grove products	809

	PAGE
GOVERNOR (Letters to)	221
Application of Constitution <i>in re</i> : Suspending certain officers	1036
Application of law <i>in re</i> : Removal officers National Guard	352
Authorized to direct examination of financial department of municipalities	765
Authorized to fill vacancy in Broward County Port District	1046
<i>Board of Administration:</i>	
Approval of refunding bonds not necessary	228
<i>Board of Bond Trustees:</i>	
Governor not authorized to fill vacancy by appointing member	224
<i>Commission:</i>	
When issued by Governor regular fees required	224
<i>Constitution:</i>	
Construction Section 11, Art. IX	223
<i>County Buildings, Roads and Bridges:</i>	
Duty of County Commissioners and State Board of Health	222
<i>County Commissioners:</i>	
Duties—County buildings, roads and bridges	222
<i>County Judge:</i>	
<i>In re</i> : Surety bond	227
<i>Democratic Executive Committee:</i>	
Method of filling vacancy	223
<i>Gasoline:</i>	
When not exempt from taxation	225
<i>Inspectors Marks and Brands:</i>	
Governor may appoint and remove	226
<i>Loan:</i>	
State not authorized to sponsor from Reconstruction Finance Corporation	228
<i>Reconstruction Finance Corporation:</i>	
State not authorized to sponsor loan from	228
<i>Refunding Bonds:</i>	
Approval Board of Administration not necessary	228
<i>Resignation:</i>	
Hon. Fred H. Davis, Attorney General	221
<i>Roads and Bridges, County Buildings:</i>	
Duty of County Commissioners and State Board of Health	222
<i>State Board of Health:</i>	
<i>In re</i> : Duties county buildings, roads and bridges	222
<i>State Democratic Executive Committee:</i>	
Method of filling vacancy	223
<i>Statute of Limitation:</i>	
Two years in certain cases	226
<i>Surety Bond:</i>	
<i>In re</i> : County Judge	227

GOVERNOR— <i>Continued</i>	PAGE
<i>Taxation:</i>	
When gasoline used in operating not exempt	225
<i>Tax Books:</i>	
Governor not authorized to extend time for closing	226
<i>Tractors:</i>	
When gasoline used in operating not exempt from taxation	225
<i>Vacancy:</i>	
Governor not authorized to fill vacancy on Board of Bond Trustees by appointment	224
Method of filling on Democratic Executive Committee	223
GOVERNMENTAL AGENCIES:	
Exempt from documentary stamp tax	871, 889, 892
GOVERNMENT BONDS:	
Exempt from documentary stamp tax	915
GOVERNMENT—MANAGEMENT OF:	
Taxpayers not denied right to participate	929
GRAND JURY LIST:	
Publication not in violation corrupt practice act	989
GUARDIAN:	
County Judge not authorized to charge for recording final report	779
<i>In re:</i> Recording accounts rendered	574
Required to make report to County Judge	778

H

HARBOR MASTERS:	PAGE
Duties and Fees	363
HEALTH CERTIFICATES:	
School teachers required to file	610
HIGH SPRINGS SPECIAL ROAD AND BRIDGE DISTRICT:	
Trustees should comply with law	396
HILLSBOROUGH COUNTY:	
Law does not apply to fees County Judge	576
HOLIDAY:	
Attendance record should not show pupils present on Armistice Day	543
HOME BREW:	
Unlawful to possess	818
HOME AND DOMICILE:	
Establishment	492
HOMESTEAD:	
Not subject to devise by will—Wife entitled to dower	1010
Suit to quiet title necessary	860
Tax deed may be issued	688
HOTEL:	
Restaurant license not required	864
<i>In re:</i> Protection of guests	752
HOTEL COMMISSION:	
When license tax required to be paid	860

HOSPITALS:	PAGE
Statute broad enough to include as "Benevolent or Charitable Organization"	792
HOUSEHOLD, IMMEDIATE:	
Construction of	595
HUMANE LAWS:	
Sections of statute	838
HUNT:	
When right forfeited	435
HUNTING LICENSE:	
Definition of "Residents"	565
Special act should be recognized	522
HYGIENIST, DENTAL:	
Must be graduate from accredited school	874

I

ICE CREAM:	
Chapter 14762 does not apply	903
IMMEDIATE HOUSEHOLD:	
Construction	595
IMMIGRATION PATROL:	
When subject to automobile license tax	693
IMPROVEMENTS AND LAND:	
Assessable for taxation	713
INDIGENT CHILDREN:	
Board County Commissioners authorized to pay necessary expenses for care of	626
INDUSTRIAL SCHOOL FOR BOYS:	
Duty of Sheriff in transporting boys	636
<i>In re</i> : Commitment and discharge	370
Justice of the peace authorized to commit boys	369
Sheriff's fees for transmitting person committed	518
Superintendent authorized to refuse commitment under certain conditions	576
White teachers not to be employed to teach negroes	360
Who clothed with right to refuse boys when committed by Court	360
INFANTS:	
Though disabilities removed not eligible to vote	894
INHERITANCE OR ESTATE TAXES:	
Certain estate liable	978
Certain mortgage bonds exempt	936
Commissioner of revenue entitled to costs and expenses	293
Construction of law	292
Construction of law <i>in re</i> : Estates, closed prior to date of Act	888
INHERITANCE TAX LAW:	
Administration expense cannot be charged against Florida estate	1031
Application <i>in re</i> : Amount taxable	1028

INHERITANCE TAX LAW— <i>Continued</i>	PAGE
Commissioner of revenue to pay fees	579
Construction	592
Duty of State Attorney	393
Interpretation <i>in re</i> : Decedents	583
INITIATIVE AND REFERENDUM FOR LEGISLATION	732
ITINERANT MERCHANT:	
Law construed	700
INQUEST:	
Necessity of, to be determined by coroner	475
When County Judge authorized to hold	398
When physicians entitled to remuneration for attending	521
INSOLVENT BANKS:	
Certain rights of depositors forfeited	861
Classification of claims	375
INSPECTORS:	
Method of selecting for election	499
INSPECTORS AND CLERKS:	
Authorized to serve in first and second primary	1003
INSPECTORS, MARKS AND BRANDS:	
Appointment and removal	226
INSURANCE:	
Construction of statute <i>in re</i> : Requirements of commissioner	333
Rebates in form of various articles cannot be given when issuing policy	760
INSURANCE BUSINESS:	
When agents liable to prosecution	797
INSURANCE COMPANY:	
<i>In re</i> : Lost coupons	775
Not subject to certain tax	333
INSURANCE LAWS:	
Violation by various companies	358
INTANGIBLE PERSONAL PROPERTY TAX:	
Application of law <i>in re</i> : Bonds, mortgages, stocks and securities	680
Application of law to banks	908
Assessment of	681
Assets of closed banks not subject to	911
Bank deposits within Class C	884
Building and loan associations required to make returns	901
Certain bonds not subject to	888
Classification of property	675, 680
Commission allowed for assessing	689
Commissions allowed for assessing same as for other tax	691
Constitution prohibits municipalities from assessing	683
Construction of law	684, 685, 901, 918
Construction of law <i>in re</i> : Banks	884

INTANGIBLE PERSONAL PROPERTY TAX— <i>Continued</i>	PAGE
Loans made by Federal Farm Board exempt	922
Mortgages held for foreign insurance companies not assessable	911
Notes and bonds subject to	1063
Returns	897
Returns necessary	926
Status of trust estates	898
Stocks and mortgages liable	946
Tax certificates not taxable	689
INTEREST:	
Banks should pay when size of each account justifies	608
Legal rate	608
Three and one-half per cent not illegal rate	867
INTOXICATING LIQUORS:	
Constitution prohibits manufacture and sale	1066
<i>In re</i> : Possession	1052
J	
JAILS:	
Sheriffs authorized to hire guards, etc.	548, 630
JAILS AND PRISON CAMPS:	
Rules and regulations <i>in re</i> : Sanitation and disinfection authorized to be made	420
JUDGE:	
<i>In re</i> : Duty when disqualified	592
Law requires report to show salary	569
Order should be issued to Sheriff to destroy whiskey	516
JUDGMENT:	
County property not subject to levy and seizure to satisfy	472
Courts have authority to change or reduce	623
How may be enforced by madamus	472
JUDICIAL DEPARTMENT OF FLORIDA	8
JURORS:	
Entitled to mileage	480
JUSTICE OF THE PEACE:	
Authorized to change or reduce sentence	623
Authorized to commit boys to Industrial School	369
Authorized to issue search warrants	624
Construction of law <i>in re</i> : Jurisdiction	615
Construction of law <i>in re</i> : Authority to appoint special constable	504
Costs should be required paid in advance	492, 508
Court docket not authorized to be removed	622
County Commissioners authorized to consolidate	507
Disposition of papers filed in criminal cases	468
Entitled to fees when approved by County Commissioners	484
Fees	568, 803
Fees, certain cases	808

JUSTICE OF THE PEACE— <i>Continued</i>	PAGE
Fees, civil cases	620
Jurisdiction, application of statute	622
Jurisdiction, <i>in re</i> : Certain cases and counties	618
<i>In re</i> : Certain expenses	625
<i>In re</i> : Construction various laws	624
<i>In re</i> : Costs	617
Not authorized to appoint constable	747
Not authorized to enforce prohibition law	826
Procedure when disqualified	616
Warrants to be issued in duplicate	618
When costs should be paid	1054
When entitled to fees	830
When have jurisdiction in juvenile cases	621
JUSTICES OF THE SUPREME COURT:	
<i>In re</i> : Salaries	277
JUVENILE CASES:	
<i>In re</i> : Jurisdiction	621
JUVENILE COURT:	
Duty of County Commissioners to fix compensation of Judge	1024
Requirements for the office of Judge	887
When children under jurisdiction of	371

K

KEROSENE:	
Collection of certain inspection tax	338
KIDNAPPING:	
Punishment, life imprisonment	966

L

LAKE HATCHNEHA BOUNDARIES:	
Declared to be in Polk County	485
LAKE WORTH INLET DISTRICT:	
Application of law, <i>in re</i> : Election of Commissioners	1059
Method of electing Commissioners	985
LAND AND IMPROVEMENTS:	
Assessable for taxation	713
LAND:	
Method of dividing excess sections	614
Mortgage foreclosure cancels plat	667
Owner may redeem part of tract	503
<i>In re</i> : Sales and taxes	461
Procedure to protect	734
LAW:	
<i>In re</i> : Population basis—construction of	500
Legislature only can repeal	377
<i>In re</i> : Claim of newspapers for publishing	299

LAW OF SET OFF:	PAGE
Does not apply in claim of Board Public Instruction Dade County....	268
LAWS, SESSION:	
Printing not current expense	826
LAWS, VARIOUS:	
Construction of	624
LAWYER:	
License tax required	1042
LAWYERS:	
Occupational license tax required	746-965
LEGAL NOTICES:	
County Commissioners authorized to select newspaper	555
Publication of	877
Publication defined	487
When newspaper may lawfully publish	826
LEGISLATION:	
Initiative and referendum, <i>in re</i> : Elections	732
LEGISLATURE:	
City Commission not authorized to repeal Act of	377
Invested with authority to abolish courts	980
Invested with authority to change poll tax law	983
Invested with authority to suspend poll tax	980
Laws can only be repealed by	377
LETTER OF TRANSMITTAL	23
LICENSE:	
Authority to revoke	414
License, hunting and fishing, non-residents, definition of "resident"	565
LICENSE TAG:	
Construction of law	852
Duties automobile tag agencies, <i>in re</i> : Collection	386
Definition of "non-resident"	386
Duty of Commissioner to issue for motor truck upon application.....	384
Only active United States officials entitled to free	883
LICENSE TAX:	
Assessment and collection by City	727
Building contractors required to pay	712
Cities and Towns prohibited from levying on fish industry	390
Construction of statute, <i>in re</i> : Payment by County automobiles	554
Dealers in shrimp required to pay	391
Definition of "non-resident," <i>in re</i> : Game law	628
Filling stations exempt	706
Fishing and hunting—children exempt	430
Fish dealers required to pay	430
<i>In re</i> : Adding machines, typewriter repairs	707
<i>In re</i> : Amusement parks	616
<i>In re</i> : Contractors	696

LICENSE TAX—Continued	PAGE
<i>In re</i> : Fruits and vegetables	765
<i>In re</i> : Money lenders	695
<i>In re</i> : Restaurants, cafes	694
Merchants required to pay coupons used	705
Not transferable	821
Producers of farm and grove products exempt	344
Producer to sell farm and grove products free of tax	743
Refund on for-hire tag not authorized	382
Sick and funeral-benefit companies and undertakers and embalmers liable	714
Tax collecting agency required to pay	699
When aeroplanes liable	708
When aeroplanes or seaplanes subject to license tax as common carriers for hire	695
When busses entitled to refund	383
When certain wholesale fruit and vegetable business required to pay	704
When fish dealers liable for wholesale and retail	768
When "for hire" license required	385
When required for dance hall	577
When World War veterans exempt from payment for selling fish	389
Wholesale and retail fish dealers differentiated	389
Construction of law, <i>in re</i> : Refrigerator and tank cars	251
LICENSE TAX, OCCUPATIONAL:	
Law requires list to be published	571
LICENSE TO PRACTICE:	
Board to determine if applicant entitled to without examination	426
LIFE INSURANCE POLICY:	
Disposition of proceeds under Section 7065 C. G. L.	744
LIGHT HOUSE SERVICE:	
If personnel exempt from motor vehicle license law	928
LIQUIDATORS:	
Application of law, <i>in re</i> : Payment net assets to stockholders	1018
Construction of law, <i>in re</i> : Time for filing claim	795
Not good policy to act as administrator	573
Suits should be brought in his name	360
LIQUOR:	
Application of law, <i>in re</i> : Searching automobile	949
<i>In re</i> : Fees for transporting into Court Room for evidence	481
Seized—Clerk Criminal Court of Record custodian	468
Violation of law to transport into State for beverage purposes.....	783
LIQUORS, ALCOHOLIC OR INTOXICATING:	
Constitution prohibits manufacture and sale	1066
LIVE STOCK:	
Application of law	930
LOANS:	
Interest three and one-half per cent not illegal	867
State not authorized to sponsor	228

LOBBYING:	PAGE
Law relating to	939
LOCAL BILLS:	
Publication does not apply to bills affecting municipalities	720
LUNACY CASES:	
Fees	566
LUNACY COMMISSION:	
Compensation for members	869
LUNACY PROCEEDINGS:	
<i>In re</i> : Compensation examining physicians	581

M

MANUFACTURERS:	
Municipalities may levy tax	836
When exempt from taxation	1064
MARRIAGE:	
Clerk not authorized to perform ceremony	567
Who authorized to solemnize rites	888
MARRIAGE LICENSES:	
Fees allowed County Judges	951
MASONIC HOME OF FLORIDA:	
Exempt from taxation	721
MASONIC LODGE:	
When building exempt from taxation	821
MAYORS (Letters to)	730
When authorized to issue search warrants	838
MEMBERS OF THE LEGISLATURE (Letters to)	372
MERCHANTS:	
Each place of business using trading stamps subject to license tax....	848
Law construed, <i>in re</i> : Itinerant	700
Not required to pay license tax for selling coffins	704
Required to pay license tax when coupons issued	705
When may operate salesboards lawfully	804
MILEAGE:	
Coroner allowed fees for	568
County Commissioners not entitled to for inspection of roads and bridges	486
Deputy Sheriff allowed to charge, incidental expenses allowed	634
<i>In re</i> : Court reporters	355
Jurors entitled to	480
Reduction to be made by vote of free-holders	643
MILEAGE TAX:	
<i>In re</i> : Exemption of contract carriers	789
When Sheriff entitled to	520
MILLAGE:	
Free-holders only have power to reduce	604
Reduction, procedure by School Board	600
When majority vote not cast former millage in effect	612

MILITARY DEPARTMENT:	PAGE
Exempt from payment gasoline tax	1039
MILITIA:	
Exempt from paying tolls	924
MILK:	
Construction of law, <i>in re</i> : Duties Commissioner of Agriculture.....	342
Inspectors not authorized to interrupt transportation but authorized to prohibit sale in certain cases	346
MILK OR CREAM:	
License tax required of dealers	346
MINIATURE POOL TABLES:	
License tax required	812
MINORITY PARTIES:	
Names of candidates must be written on ballot—stickers illegal.....	1048
MISCELLANEOUS CORRESPONDENCE	728
MONEY LENDERS:	
Statute construed, <i>in re</i> : License tax	695
MORTGAGE BONDS:	
When exempt from inheritance tax	936
MORTGAGE FORECLOSURE:	
<i>In re</i> : Service upon insane wife	999
Method of procedure	906
Platted land restored to original description	667
Property not exempt may be sold to satisfy deficiency decree.....	1005
MORTGAGE SATISFACTIONS:	
Documentary stamps not required	962
MOTHERS' AID:	
Certificate to be furnished to County Commissioners	606
MOTOR HIGHWAY CARRIERS MILEAGE TAX ACT:	
Railroad Commission proper party to enforce	279
MOTOR TRANSPORTATION COMPANY:	
<i>In re</i> : Taxation	726
MOTOR TRANSPORTATION MILEAGE TAX:	
Application of law, <i>in re</i> : Trucks and busses	292
Comptroller authorized to appoint agents to enforce law	287
Construction, <i>in re</i> : Travel bureaus	294
Construction of law as to computing and collecting	248
<i>In re</i> : Tax due by National Convoy & Trucking Co.	309
Motor Transportation Division may expend necessary funds for proper administration of law	273
MOTOR TRUCK:	
Certified carriers entitled to obtain license for 6 months	896
Duty Commissioner to issue license tag upon application	384
Private common carriers allowed 16,000 load weight	960
When not liable for tag tax	905
MOTOR VEHICLES:	
Ad Valorem tax unconstitutional	674

MOTOR VEHICLES—Continued	PAGE
Application of law, <i>in re</i> : Length—trailers and semi-trailers included	1004
Application of law, <i>in re</i> : "For hire license" to municipalities	927
City given special power to regulate when operated for hire	382
Construction of law, <i>in re</i> : Distribution mileage tax to cities and towns	302
Construction of law, <i>in re</i> : License tag tax	852
Construction of law, <i>in re</i> : Traffic regulations	457
Dealers not authorized to operate on public highways without tag	615
Drivers may be held liable when driving for State College	411
Governmental agency not liable for negligent operation—driver may be held liable	411
Law construed, <i>in re</i> : Gross weight limit	384
Law regulating speed	866
License tax, when owned by County	554
Mileage tax, exemption	789
Not subject to ad valorem tax	937
"Private use rates" applicable	960
Reckless driving	844
Refund on "for hire" tag not authorized	382
Speed limit	719
Supervision and regulation	302
Supervision by Railroad Commission	763
Taxation by municipalities	904
When Board of Public Instruction exempt from payment license tax	350
When disabled war veterans exempt from tax	387
When Florida license tag required	807
When "for hire" license tag required	385
When owners cease to be non-residents	386
When \$2.00 tag tax applicable, <i>in re</i> : officers and employees State Road Department	454
MOTOR VEHICLE COMMISSIONER (Letters to)	382
MOTOR VEHICLE LICENSE TAX:	
If owners of trucks subject to, and also subject to fish dealer's license	373
If personnel of Light House service exempt	928
Only officers and enlisted men exempt from payment	380
MOTION PICTURES:	
Application of law, <i>in re</i> : License tax	1026
Unlawful to operate on Sunday	767
MOVING PICTURE INDUSTRY:	
If exempt from taxation	1037
MUNICIPAL AND STOCK EXCHANGE SECURITIES:	
Dealers required to register and file bond	794
MUNICIPAL CORPORATION:	
Authority granted to abolish office tax collector	679
Proceedings to surrender franchise	742
Right to use portion sinking fund to pay interest coupons	737

MUNICIPAL ELECTIONS:	PAGE
<i>In re</i> : Payment of poll taxes	621
MUNICIPAL OFFICE:	
When person eligible to hold	584
MUNICIPAL ORDINANCE:	
Fine of \$500.00 within law	753
MUNICIPAL PROPERTY:	
When exempt from taxation	469
When not exempt from State and County taxes	672
MUNICIPALITIES:	
Application of law, <i>in re</i> : Authority to borrow money on anticipated collection of taxes	764
Application of law, <i>in re</i> : "For hire license"	927
Authorized to fix value on railroads for taxation purposes	799
Authorized to levy tax on manufacturers	836
Construction Utilities Act	904
Empowered to impose license tax on barbers	799
Entitled to one-half road and bridge tax	477
Governor authorized to direct examination of Financial Department	765
May declare class of Bonds to be accepted for tax certificates	395
May impose 25 per cent of State tax on chain stores	722
May levy 25 per cent of State license on stores	961
Method of surrendering franchise	798
Not authorized to accept own bonds in payment taxes	815
Not authorized to assess intangible personal property	683
Property leased not exempt from taxation	480
Protection of funds in State banks	772
Publication of local bills does not affect	720
Publication of tax sales	805
Redemption of tax liens and tax certificates on installment	721
Regulations, <i>in re</i> : Special benefit taxes—plumbing	737
Supplies, if member Council prohibited from purchasing from himself	593
Taxation motor transportation company	726
Taxation of motor vehicles	904
Tax exemption	905
When one-half of taxes special road and bridge districts to be paid to	508
MURDER TRIAL:	
<i>In re</i> : Conviction—new trial	399
MUTUAL FIRE INSURANCE BUSINESS:	
Cannot be operated under law as non-profit sharing corporation	322

N

NATIONAL BANKS:	
Authorized to issue limited permit to do business in state	229
Construction of law <i>in re</i> : Situs of taxation for stock owned by non-residents	315

NATIONAL BANKS— <i>Continued</i>	PAGE
Furniture and fixtures not subject to taxation	723
<i>In re</i> : Assessment of personal property	669
NATIONAL FOREST FUNDS:	
Distribution	535
NATIONAL GUARD:	
Governor's power to transfer or remove officers	352
NATUROPATHIC EXAMINERS:	
Board may revoke license for certain causes	426
Construction of law <i>in re</i> : Right of Thyto-Therapy to prescribe, etc.	424
NATUROPATHIC PHYSICIANS:	
Construction of law	424
When authorized to issue health certificates	424
NAVAL STORES:	
Construction of law <i>in re</i> : Inspection and classification	794
NAVA STORES INSPECTOR:	
Application of law	916
NAVIGABLE WATERS:	
<i>In re</i> : Shore space	523
NEGLIGENCE:	
When statute of limitation runs against physician	790
NEGROES:	
Not allowed to vote in white Democratic primary	910
Registration authorized—Not permitted to vote in primaries	965
When allowed to register and vote	942
NETS:	
Construction of law <i>in re</i> : Use for fishing in certain waters	518
NEWSPAPERS:	
Claim for publishing laws	299
County Commissioners authorized to select for publication delinquent tax lists	555
Entitled to one hundred dollars for publishing laws	913
If qualified to publish delinquent tax list	956
When may lawfully publish legal notice	826
When qualified to publish tax sale notices	833
NEW TRIAL:	
Murder case	399
NOMINEE, GENERAL ELECTION:	
Not required to pay any fee	1043
Voter morally bound to support	986
NON-RESIDENT CHILDREN:	
School attendance	545-546
NON-RESIDENT:	
Definition <i>in re</i> : Game law	628
Definition <i>in re</i> : license tag	386
Eligible to act as administrator	810
NOTARY PUBLIC:	
No penalty attached for failure to affix date commission expires	754

NOTES AND BONDS:	PAGE
Subject to intangible and documentary stamp tax	1063
NURSE, PUBLIC HEALTH:	
When Board County Commissioners authorized to employ	531
NURSERY STOCK:	
Assessed as personal property	687

O

OCEAN SHORE IMPROVEMENT DISTRICT:	
Bond trustees not authorized to grant franchise	778
Construction of law <i>in re</i> : Disposition of tax funds	715
OCCUPATIONAL LICENSE TAX:	
Dance halls and night clubs	708
Duty of Comptroller to collector from oil company	698
Duties Tax Collector	920
Interpretation law <i>in re</i> : Boarding houses	709
Lawyers required to pay	965
Rug cleaning business liable	706
When disabled war veterans entitled to	575
When disabled war veterans exempt	707
OFFICE:	
Application of Constitution <i>in re</i> : Unexpired term	1050
County officers not authorized to hold two	761
Expense—Itemized statement required	686
Funds—County officers not authorized to use to pay private auditor	486
One person cannot hold two	966
When deemed vacant by County Commissioner	865
When person eligible to hold state and municipal	584
OFFICERS:	
Construction of appropriation bill <i>in re</i> : Salaries	357
Delinquent— <i>In re</i> : Duty of Comptroller and other officers	591
Sentence imposed valid	836
U. S. army—When exempt from payment automobile license tax	352
U. S.—Not entitled to license tag free if retired	883
OIL COMPANY:	
Duty of Comptroller to collect occupational license tax	608
OKEECHOBEE FLOOD CONTROL TAXES:	
Interest required to be paid	703
OPINIONS, OFFICIAL:	
OPINIONS, SEMI-OFFICIAL, STATE OFFICERS	352
OPINIONS, UNOFFICIAL, COUNTY OFFICERS	464
OPTOMETRY:	
Licensed optometrist may be employed by corporation	415
Limited examination authorized	414
State should prosecute for violation of Act	415
OSTEOPATH:	
Doctor has right to use M. D. after his title	422

OYSTER BOTTOMS:	PAGE
Application for leases	392
OYSTERS AND CLAMS:	
<i>In re</i> : Leasing and cultivating water bottoms for growing	390

P

PAINTERS:	
Occupational license tax required	856
PAINT MANUFACTURING PLANTS:	
Entitled to exemption	705
PALM BEACH GREYHOUND ASSOCIATION:	
Bond approved	443
PARTY AFFILIATION:	
Electors may change	654
Method for changing	666-880
Requirement for changing	687
Statutory provision	659
PAUPERS:	
Burial expenses	570
PEDDLERS' LICENSE:	
When disabled war veterans exempt	707
When required to pay	886
Exemption should be granted to cripples in each County where goods sold	806
PERMITS:	
Board has no discretion in granting	449
PERSONAL PROPERTY:	
Application of law, <i>in re</i> : Taxation	675
Application of statute, <i>in re</i> : Removing from State while under retain title contract	586
Assessment of	681
Assessment when owned by National Bank	669
Boats	745
Nursery stock should be assessed	687
When automobiles assessable	686
Windows designated and sold	697
PERSONAL PROPERTY TAX:	
Application of law, <i>in re</i> : Bonds, mortgages, stocks and securities....	680
Classification, <i>in re</i> : Intangibles	680
Commissions allowed for assessing intangibles	691
Construction of law, <i>in re</i> : Intangibles	684-685
Method of enforcing collection	513
PHYSICIAN:	
Compensation in lunacy cases	581
When conviction does not disqualify	998
When entitled to remuneration for attending inquests, and making post mortem examinations	521

PHYTO-THERAPY PRACTITIONERS:	PAGE
Construction of law, <i>in re</i> : Right to prescribe	424
PILOTAGE RATES:	
<i>In re</i> : Shipping	1020
Law designates	1025
PILOT COMMISSIONERS:	
Authorized to promulgate rules and regulations	427
PILOTS AND HARBOR MASTERS:	
Duties and fees	365
PISTOL:	
County Commissioners have authority to grant permit	851
License, not required to carry in automobile	570
When agents or officers of common carriers authorized to carry...	817
PLUMBING:	
Municipal regulations covering	737
PODIATRY:	
Unlawful to practice without license	800
POLITICAL ADVERTISEMENTS AND LITERATURE:	
Construction of law	609
POLITICAL PARTY:	
Definition of	975
Nominees of not within purview of law	246
POLK COUNTY:	
Lake Hatchena declared to be located in	485
POLLS:	
Application of law as to opening	997
POLL TAX:	
Application of election law, <i>in re</i> : Voting without paying poll tax...	969
Application of law, <i>in re</i> : Payment as prerequisite to vote	1003
Construction of law	650
General Election	664
Last day of payment	648-697
Law does not authorize appointment Deputy Tax Collector to collect	711
Legislature only can suspend payment	980
Method of payment	710
Method of payment—Legislature only authorized to change law.....	983
Municipal elections	621
Only officers and enlisted men exempt	1043
Payment, eligibility to vote	765
Payment and exemption	948
Time for payment	665
When exemption allowed	709
When payment for two years necessary to vote	710
When two receipts necessary	661
When World War veteran exempt	660
Who entitled to exemption	495
Who liable for	655

POLL TAX RECEIPTS:	PAGE
Application of law	661
Construction of law	658
POOL ROOM:	
License required for each place of business	579
POOL TABLES:	
License required	705
License tax required on miniature	812
When subject to tax	902
POOR AND INDIGENT:	
County Commissioners authorized to care for	500
PORT COMMISSIONERS:	
Authorized to dispose of old vessels in harbor	368
POST-MORTEM EXAMINATIONS:	
When physicians entitled to remuneration for making	521
PREACHERS:	
Exempt from paying tolls	906-924-955
PREACHERS' RELIEF FUND:	
If law, incorporating certain persons as trustees, is valid	397
When tax exemption allowed on property	398
PREFERRED CLAIMS:	
Extent of participation	274
PREGNANCY:	
Certain acts constitute a crime	417
PRESIDENTIAL ELECTORS:	
Florida entitled to seven	239
PRIMARY ELECTION:	
Application of law, <i>in re</i> : Qualification of candidates	991
Candidates must be nominated	659
Certain expenditure by candidate not authorized	474
Certain persons not qualified to vote	640
Construction of statute, <i>in re</i> : Poll taxes—Registration books, help, compensation, etc.	650
Democratic voters only allowed to participate	655
Disposition of tally sheets	652
Duties of Sheriff	528
<i>In re</i> : Filing statements for campaign expenses and last day for qualifying	235
Inspectors and Clerks to serve in first and second	1003
Legal voting age, construction of law	654
Limitation of expenditures by candidates	560
Negroes not allowed to vote	910
Negroes not allowed to vote—registration allowed	965
Negro, when allowed to register and vote	942
Payment poll taxes prerequisite to vote	1003
Prerequisite to register and vote	655
Prerequisite to vote	657-929
Sheriff entitled to mileage	641

PRIMARY ELECTION— <i>Continued</i>	PAGE
Students must register in person	362
White Democratic voters only allowed to participate	655
Name of candidates not to be printed on ballot if expense statement not filed	241
PRIMARY ELECTION LAW:	
Candidate to pay assessment of 3 per cent of annual compensation of office	975
Fees and statements, construction	488-493
PRINTING:	
Expense—When not current	826
PRISONERS:	
Client has right to intervene	756
Constables—Duties and fees for committing to Jail	633
Costs and fines—Revision of statute	766
Entitled to witness fees	634
Feeding	380-399
Feeding, amount allowed Sheriff	632
Prosecuting county liable for cost of maintaining	467
Returning from another county	506
PRIVATE COMMON CARRIERS:	
Allowed 16,000 pounds load weight	960
PROBATION OFFICER (Letters to)	626
Payment of actual expenses left to discretion of board	553
Salary, abolition not authorized	526
PRODUCERS:	
Exempt from license tax on farm and grove products	784-809-822
PROHIBITION LAW:	
Construction <i>in re</i> : Manufacture and sale of citrus and other fruit syrups	930
Jurisdiction County Judge and Clerk Circuit Court	572
Justices of Peace have no jurisdiction	826
PROSECUTING ATTORNEY:	
Board not authorized to dispense with services	547
Duties	587
Fees and method of appointment	466
When entitled to conviction fees—Not entitled to fee for conducting preliminary hearings	521
When entitled to conviction fees	589
PUBLICATION:	
Legal notices defined	487
Tax sale notices	725
PUBLICATION OF LIST OF QUALIFIED ELECTORS:	
Fee chargeable	1051
PUBLICATION OF TAX SALES:	
Newspaper designated	805
When newspaper qualified	833

PUBLIC FREE SCHOOLS:	PAGE
County school funds can only be used for maintenance	611
PUBLIC HEALTH NURSE:	
When Board County Commissioners authorized to employ	531
PUBLIC RECORDS:	
Private citizen has right to inspect	878
PUBLIC SCHOOLS:	
Age limit six to twenty-one years	1042
PUGILISTIC EXHIBITION:	
Application of law—Exception noted	1047
Certain organization exempt from all laws affecting such	966
Law construed	947
PUNISHMENT—IMPRISONMENT:	
Jurisdiction application of law	584
Information may be filed under Chapter 12,022, Sec. 3	394
PUPILS:	
Attendance record should not show "Present" on Armistice Day	543
Certain contract for transportation void	540
Transportation and cost	983
PURCHASING AGENT	590
PURCHASING DEPARTMENT:	
Tax exemption on gasoline and oils purchased for Board Commis- sioners State Institutions	1035

Q

QUARANTINE RULES:	
State should not conflict with Federal	438
QUO WARRANTO AND OTHER EXTRAORDINARY REMEDIES	117

R

RACE HORSES:	
Taxation—When not subject to	677
RACE TRACKS:	
Money to be equally divided among counties	935
One and same name must be used	882
Operators—Bond required with each annual license	448
Construction <i>in re</i> : Election to be called by County Commissioners	1019
Procedure for permit to conduct racing	923
RACING:	
Application for permits, time for filing	444
Application for permit to operate, etc.	447
Board has no discretion in granting permits	449
Bond approved, Palm Beach Greyhound Association	443
Bond required with each annual license	448
Construction of law <i>in re</i> : Application for permits—Bond	445
Construction of law <i>in re</i> : Bond	446
Election—Duties of Supervisor of Registration	519

RACING—Continued	PAGE
Law construed	443
Permits not transferable	447-448
RACING ACT:	
Advertising fund—Money received by counties may be used to create	353
Application for permit to operate under certain conditions	447
Application of law <i>in re</i> : Population basis	500
Application of statute <i>in re</i> : Disposition of funds	1008
Construction	441
Construction certain portions	810
Construction <i>in re</i> : Application for permits—Bond required	445
Construction <i>in re</i> : Bond	446
Construction <i>in re</i> : Registration and voting	816
County Commissioners authorized to distribute funds received	476
Interpretation <i>in re</i> : Disposition of money inuring to county	970
Occupational license tax lawfully paid	444
Permits granted not transferable	973
Permits not transferable	447-802
Permit or license not transferable	448
Qualification to vote	804
Requirement for holding election	804
RACING COMMISSION:	
Application for permits, time for filing	444
Construction of law	443
Law requires return and report to Budget Commission	317
RACING PERMITS:	
Amending applications	440
Receiver entitled to	441
RADIOS:	
Dealers Required to pay license	314
RADIO STATION WRUF:	
When required to pay for use of certain compositions	412
RAILROAD COMMISSION:	
Supervision over motor vehicles	763
RAILROADS:	
Municipality authorized to fix values for taxation	799
REAL ESTATE BROKER:	
License required	971
RECKLESS DRIVING:	
Law applicable	844
RECONSTRUCTION FINANCE CORPORATION:	
Persons acting for, free from liability for accident, etc.	423
RECORDS, STATE FINANCIAL:	
No authority for destruction	420
REFUND:	
Not authorized on "For Hire" tag	382

REFUNDING BONDS :	PAGE
Application of law	950
Approval Board of Administration not necessary	228
Law applicable to issuance	869
REGISTRAR VITAL STATISTICS :	
Fees, and disposition	419
REGISTRATION :	
Elector, when qualified	661
Law designates time	712
Law repealed	701
Law repealed as to registering before Tax Collector	580
Transfer certificates should be issued to voter	656
When requested biennially	646
REGISTRATION BOOKS :	
Construction of law, <i>in re</i> : Primary elections	650
Construction of statute, <i>in re</i> : Pinellas County	648
Course to Pursue when locked in Ballot Box	663
Date for closing	664
Duties of registration officer	662
Duties Supervisor, <i>in re</i> : General election	243
Names erased or stricken should be published	525
Opening and closing	649
Poll taxes—Time for closing and payment	665
Registration requirements	658
Required to be sent to each Precinct	647
Revision required	498
Supervisor authorized to transfer names to new books	475
Time for closing	650
REGISTRATION FEE :	
Drug store and pharmacy	422
War veterans not exempt	976
REGISTRATION LIST :	
Supervisor authorized to charge for copy	971
REGISTRATION OFFICERS :	
Maximum fee	638
REPORT OF STATE ATTORNEYS AND COUNTY SOLICITORS	137
<i>First Judicial Circuit:</i>	
Escambia County	137
Okaloosa County	138
Santa Rosa County	137
Walton County	140
<i>Second Judicial Circuit:</i>	
Franklin County	143
Gadsden County	144
Jefferson County	145
Leon County	141
Liberty County	142
Wakulla County	141

REPORT OF STATE ATTORNEYS AND COUNTY SOLICITORS— <i>Continued</i>	PAGE
<i>Third Judicial Circuit:</i>	
Columbia County	151
Dixie County	150
Hamilton County	158
Lafayette County	149
Madison County	150
Suwannee County	147
Taylor County	145
<i>Fourth Judicial Circuit:</i>	
Clay County	153
Duval County	153
Nassau County	155
<i>Fifth Judicial Circuit:</i>	
Marion County	155
<i>Sixth Judicial Circuit:</i>	
Pasco County	157
Pinellas County	156
<i>Seventh Judicial Circuit:</i>	
Volusia County	158
<i>Eighth Judicial Circuit:</i>	
Alachua County	159
Gilchrist County	160
Levy County	160
<i>Ninth Judicial Circuit:</i>	
Holmes County	161
Washington County	162
<i>Tenth Judicial Circuit:</i>	
Polk County	163
<i>Eleventh Judicial Circuit:</i>	
Dade County	164
<i>Twelfth Judicial Circuit:</i>	
Charlotte County	166
Collier County	169
Glades County	165
Hendry County	167
Lee County	168
<i>Thirteenth Judicial Circuit:</i>	
Hillsborough County	170
<i>Fourteenth Judicial Circuit:</i>	
Calhoun County	171
Gulf County	172
Jackson County	170
<i>Fifteenth Judicial Circuit:</i>	
Palm Beach County	173
<i>Sixteenth Judicial Circuit:</i>	
Lake County	174
Sumter County	174

REPORT OF STATE ATTORNEYS AND COUNTY SOLICITORS— <i>Continued</i>	PAGE
<i>Seventeenth Judicial Circuit:</i>	
Orange County	175
Osceola County	176
<i>Eighteenth Judicial Circuit:</i>	
Manatee County	177
<i>Nineteenth Judicial Circuit:</i>	
Desoto County	179
Hardee County	179
Highlands County	179
<i>Twentieth Judicial Circuit:</i>	
Monroe County	180
<i>Twenty-First Judicial Circuit:</i>	
Indian River County	183
Martin County	181
Okeechobee County	181
St. Lucie County	182
<i>Twenty-Second Judicial Circuit:</i>	
Broward County	184
<i>Twenty-Third Judicial Circuit:</i>	
Brevard County	187
Seminole County	186
<i>Twenty-Fourth Judicial Circuit:</i>	
Citrus County	188
Hernando County	188
<i>Twenty-Fifth Judicial Circuit:</i>	
Flagler County	191
Putnam County	190
St. Johns County	189
<i>Twenty-Sixth Judicial Circuit:</i>	
Baker County	195
Bradford County	196
Union County	197
<i>Twenty-Seventh Judicial Circuit:</i>	
Sarasota County	198
<i>Twenty-Eighth Judicial Circuit:</i>	
Bay County	199
RESIGNATION:	
Honorable Fred H. Davis, Attorney General	221
RESTAURANTS, CAFES, ETC.:	
Construction of law; <i>in re</i> : License tax	694
RETAINER TITLE CONTRACT:	
Removing personal property from State	586
REWARDS:	
Sheriffs if authorized to pay	403
RIGHT-OF-WAY:	
Trustees I. I. Fund not authorized to convey to United States Government	460

ROADS:	PAGE
State Road Department authorized to pay for certain construction work	450
ROAD AND BRIDGE TAX:	
Municipalities entitled to one-half	477
ROPE MANUFACTURERS:	
Taxation, when exempt	1064
RUBBER STAMP:	
Law does not prohibit use in certain cases	537
Right of public officer to use in signing official documents.....	594
RUG-CLEANING BUSINESS:	
Liable for occupational license tax	706

S

SAINT AUGUSTINE:	
Boundaries	834
SALARIES:	
County Commissioners—Construction of Section 2223, Compiled General Laws	551
County Judge—Law requires report to include	569
Only amount fixed by law can be paid	542
School board not authorized to reduce salary of superintendent of public instruction	603
Superintendents public instruction—Law covering	596-600-602
SALESBOARDS:	
When operation by merchants lawful	804
SCHEDULE OF CIVIL CASES	54
SCHOOL BOARD:	
Authorized to remove trustee for neglect of duty	611
Duties	546
Duty to call special tax school district election	594
Driver, school bus—Discretion must be used in selecting	347
Gasoline storage tax, liable for	827
Members entitled to compensation when absent on account of sickness	533
Method of electing members, Levy County	943
Millage reduction	600
Not authorized to lend sinking fund moneys	608
Not authorized to pay certain obligations from district funds or change millage	808
Not authorized to pay interest on teacher's salaries	541
Not authorized to reduce millage	603
Not required to affix documentary stamps to note	609
Only salary fixed by law can be paid	542
Promissory note not eligible as collateral	311
Teachers' salary, construction of law	350
When contract for transportation of pupils void	540
When members entitled to compensation under Section 530, Compiled General Laws	536

	PAGE
SCHOOL BUILDING:	
Board Public Instruction may employ janitor	1032
Disposition of insurance money	880
Issuance of bonds for improvements	378
Notes cannot be issued for future payment	532
SCHOOL BUSES:	
When exempt from taxation	897
When required to pay For Hire license tax	386
School Board must use own discretion in selecting driver	347
SCHOOL CHILDREN:	
Contracts for transportation	613
SCHOOL DEBTS:	
No remedy at law	538
SCHOOL DISTRICT REFUNDING BONDS:	
Law applicable to issuance	869
SCHOOL DISTRICTS:	
Liable for debts when consolidated	915
SCHOOLS:	
Free, application of law	806
Principal to certify to board persons entitled to mother's aid	605
Tuition fees	715
SCHOOL FUNDS:	
Apportionment and distribution	813
Board has power to use for maintaining and operating summer schools for teachers	539
Expenditure	801
Poor children cannot be fed from	849
SCHOOL HOUSE:	
County school funds may be used for rebuilding	543
SCHOOL MONEY:	
Distribution	923
SCHOOL PROPERTY:	
When exempt from taxation	937
SCHOOLS, PUBLIC, FREE:	
Age limit six to twenty-one years	1042
SCHOOLS:	
Attendance of students from outside of districts	545
Duties trustees and school board	546
SCHOOL SURVEY COMMISSION:	
Now functus officio	598
SCHOOL TEACHERS:	
Allowed sick leave on pay	859
Amount set apart for payment of salaries not transferable	607
Board must act in good faith when rejecting nominations	611
Board not authorized to pay interest on past due salaries	541
Board of Public Instruction authorized to employ	644
County school board employs and fixes salary	848

SCHOOL TEACHERS— <i>Continued</i>	PAGE
Entitled to full pay when absent on account sickness or death	532
Moneys appropriated by state are being used to pay prior salaries	952
Nomination and appointment	462
Not authorized to use due bills in payment of taxes	743
School board not authorized to issue certificates in payment of salaries	847
State not authorized to pay interest on salary due	866
Teacher's unit law does not limit funds to payment of salaries	775
Trustees not authorized to fix salaries	603
Under rules State Board of Health, health certificate should be filed	610
Who authorized to appoint	643
SCHOOL TRUSTEES:	
Duties	546
Eligible to serve as county commissioner	1022
When two candidates receive same number of votes, neither is elected	597
Who authorized to appoint teachers	432
SEARCHES:	
When within law	949
SEARCH WARRANT:	
Must be properly issued for specific purpose	635
When mayor authorized to issue	838
When sheriff entitled to fee	783
When valid if served on Sunday	820
SECOND PRIMARY:	
Absentee voter's ballot may be cast	581
SECRETARY OF STATE (Letters to)	229
<i>Ad Valorem Tax:</i>	
When corporations exempt	244
<i>Candidates:</i>	
Certificates of nomination not authorized under statute	245
Names not to be printed on ballot if expense statement not filed	241
Qualification and certifying names for circuit judges or state attorneys in certain cases	237
Secretary of State not authorized to certify	246
When refund of qualification fees not authorized	240
<i>Certificates of Nomination:</i>	
Not authorized under statute	245
Secretary of State not authorized to certify	246
<i>Cooperative Associations:</i>	
Authorized to transact business under Chapter 7384, Acts of 1917	235
<i>Corporations:</i>	
Ad valorem tax—When exempt from payment	244
Certain deductions in filing fees allowed	233
Certificate of incorporation required	242
Chapter 14677 not in conflict with Section 4268, C. G. L.	231
Filing fees required	242
Not authorized under law to have two separate names	232

SECRETARY OF STATE— <i>Corporations—Continued</i>	PAGE
Section 11 of Chapter 14677 refers to fees to be paid	234
Separate corporate entity, when each required to pay filing fees	233
When suspended privileges and charter rights re-established, all taxes due must be paid	243
Wording of charter does not prohibit filing	247
<i>Corporation Tax:</i>	
Holding companies required to pay	240
Within rights to refuse to refund payment	770
<i>County Surveyor:</i>	
Question as to qualification must be decided by Court	247
<i>Documentary Stamps:</i>	
Administrative officer not authorized to refuse to file document be- cause stamps omitted	234
<i>Election:</i>	
Duties Supervisor of Registration <i>in re</i> : Registration books	243
Filing statements for campaign expenses and last day for qualifying	235
Name of candidate not to be printed on ballot if expense statement not filed	241
<i>Electors, Presidential:</i>	
Florida entitled to seven	239
<i>Expense Statement:</i>	
If candidate has not filed, name not authorized to be printed on bal- lot	241
<i>Filing Fees:</i>	
Corporations required to pay	242
<i>Foreign Corporations:</i>	
Method of computing charter tax	229
<i>General Election:</i>	
Duties Supervisor of Registration <i>in re</i> : Registration books	243
<i>National Banks:</i>	
Secretary of State authorized to issue limited permit to do business in state	229
<i>Political Parties:</i>	
Nominees of not within purview of law	246
<i>Presidential Electors:</i>	
Florida entitled to seven	239
<i>Primary Election:</i>	
Filing statements for campaign expenses and last day for qualifying	235
Name of candidates not to be printed on ballot if expense statement not filed	241
<i>Registration Books:</i>	
Duties Supervisor <i>in re</i> : General election	243
<i>Supervisor of Registration:</i>	
Duties <i>in re</i> : Registration books	243
<i>Surveyor:</i>	
Question of qualification must be decided by Court	247

SECRETARY OF STATE—Continued

PAGE

Tax Collectors:

Method of increasing or decreasing bonds	231
--	-----

Taxes:

Corporations must pay when suspended privileges and charter rights re-established	243
State officials not authorized to accept payment under protest	236

Securities:

When bank not required to register as dealers in	981
--	-----

Securities Act:

Qualification in certain cases necessary	777
Qualification of dealers and salesmen necessary	774
Qualification under	773

Securities Held by State Treasurer:

Construction of statute	325
-------------------------------	-----

Securities Law:

Construction	1053
--------------------	------

Securities, Sale of:

Interpretation of statute	325
---------------------------------	-----

Seeds:

Report of sale required	438
-------------------------------	-----

Senate Bill No. 852:

Construction of	357
-----------------------	-----

Sentence:

Court authorized to change or reduce	623
Suspension	360-361

SHELL FISH COMMISSIONER (Letters to)	388
---	-----

SHERIFFS (Letters to)	625
-----------------------------	-----

Authorized to employ guards and servants for jails	630
Authorized to hire guards for jails	548
Carbide or gas lighting system for jails	631
Cost bills—Method of collecting in certain cases	958
County Commissioners have authority to transfer certain funds to pay costs	630
Deputies—Authorized to make arrest in any part of county	757
Deputy, expense of	634
Duties <i>in re</i> : Primary election	528
Duties <i>in re</i> : Service writs and processes	629
Duties on election day	642
Duty <i>in re</i> : Bail bonds	642
Duty in transporting boys to Industrial School	636
Entitled to fees and mileage when returning prisoner from another state	634
Entitled to mileage <i>in re</i> : Primary election	641
Feeding prisoners, amount allowed	380-633
Fees	520-630
Fees and mileage	638-762
Fees allowed for electrocutions	628

SHERIFFS—Continued

	PAGE
Fees allowed for enforcing prohibition law	635
Fees fixed by general law	639
Fees for attending coroner's inquest	626
Fees for executing search warrant	783
Fees for transporting persons committed to industrial schools and state prison	518-632
Fees, lunacy cases	566
Fees—Method to procure	563
Fees—Payment for executing warrant where no indictment found— Section 8488, C. G. L.	465
Four dollars per diem allowed for court attendance	631
Mileage fees when transporting twelve prisoners	796
Official bonds required to cover full term of office	548
Order should be issued by Judge to destroy whiskey	516
Permit not required to carry firearms	636
Prisoners, entitled to mileage when returning from beyond limits of state	520
Rewards, payment of	403
Search warrant must be properly issued for specific purpose	635
Status during pendency of supersedeas bond	637
SHIPPING:	
Pilotage rates	1020
SHORE SPACE:	
Application of law	523
SHOWS:	
When exempt from license tax	747
SHRIMP:	
Dealers required to pay license	391
SICK AND BENEFIT COMPANIES:	
Liable for license tax	714
SIGNS:	
When illegal to display	417
When do not come within provision of Section 3529, Compiled General Laws	522
SINKING FUND BONDS:	
Must be used for specific purpose	534
SINKING FUNDS:	
When Board authorized to invest	613
SLOT MACHINES:	
Operation and procedure for seizures and disposition	506
Prohibited in State	858
SMALL LOANS:	
Law governing	882
Permissible rate of interest	738
SMALL LOAN COMPANIES:	
Qualifications	871

SMALL LOAN LAW:	PAGE
Approved by citizens	755
Construction	760-927
License necessary	1000
SOLDIERS, ARMY AND NAVY:	
Members Immigration Patrol—When subject to personal tax on automobiles	693
SPECIAL ACT:	
Held constitutional until Court adjudicates otherwise	500
SPECIAL ROAD AND BRIDGE DISTRICTS:	
Certain commission allowed for assessing taxes	683
Law construed, <i>in re</i> : Money to be received by cities and towns from taxes	720
Disposition of unexpended balance	530
SPECIAL TAX SCHOOL DISTRICT:	
Abolishment, application of law	982
Bond elections	928
Candidate for trustee must be qualified elector	602
Commission for assessing taxes	951
Commissions of Tax Assessor	1005
Compromise adjustment of certain accounts by Board of County Commissioners	552
Elections, application of law	989
Freeholders only have power to reduce millage	604
Last millage voted to be levied still in effect	612
Majority vote must be recorded in both districts for consolidation... ..	605
Not authorized to issue bonds to pay certificates of indebtedness... ..	536
Reduction of millage not authorized	602
School Board may pay for transporting pupils	597
School building improvements, issuance of bonds	378
School teacher, who authorized to appoint	643
Trustees not authorized to fix salaries of school teachers	603
Trustee—Right to hold office to be determined at time point of qualification raised	595
Trustees, who eligible to serve	1013
Voters and electors, who qualified	597
SPECIAL TAX SCHOOL DISTRICT BONDS:	
Duty of Board of Public Instruction, <i>in re</i> : Payment principal and interest	601
When Board authorized to invest sinking funds	613
SPECIAL TAX SCHOOL DISTRICT ELECTIONS:	
Application of law, <i>in re</i> : Issuance of bonds	1015
Bonds—Application of law, <i>in re</i> : Registration	1014
Certain duties and qualifications prerequisite to vote	598
Duty of School Board to call	594
Election for consolidation—Construction of law	542
Interpretation of law	751

SPECIAL TAX SCHOOL DISTRICT ELECTIONS— <i>Continued</i>	PAGE
Millage to be assessed	1011
Vote—Certain persons not qualified	599
Vote—Only those paying ad valorem taxes eligible	1011
Vote—Prerequisite	970
Vote—Qualification	977
Vote—Qualification, <i>in re</i> : Consolidation	810
Vote—Who eligible to	1013
Voters—Qualified, defined	544
SPECIAL TAX SCHOOL DISTRICT FUNDS:	
Amount set apart for payment of teachers' salaries not transferable....	607
SPECIAL TAX SCHOOL DISTRICT TAXES:	
Commissions for assessing and collecting	606
Tax Assessor not entitled to fees	595
SPECIMENS:	
Wild birds, nests, eggs	433
SPECTACLES, EYEGLASSES:	
Licensed optician only may sell	866
SPEED LIMIT:	
Law not repealed	719
Law regulating	866
SPONGE FISHING:	
Certain ruling not authorized by law	388
SPRINKLER SYSTEM:	
Board of Commissioners of State Institutions not authorized to install	439
SQUIRRELS:	
Pets permitted under certain conditions	801
STATE:	
Not authorized to pay interest on salary due school teachers	866
STATE AND COUNTY LICENSE:	
How to be determined by baking company	1002
STATE ATTORNEYS (Letters to)	393
Application of law, <i>in re</i> : Salary	394
Duty, <i>in re</i> : Inheritance tax law	393
Entitled to salary until successor duly qualified	267
Information may be filed under law	394
Not authorized to search Western Union Telegraph files without consent	395
Reimbursement, when entitled to for funds expended	561
Reports	137
<i>First Judicial Circuit:</i>	
Escambia County	137
Okaloosa County	138
Santa Rosa County	137
Walton County	140

STATE ATTORNEYS—Continued

PAGE

Second Judicial Circuit:

Franklin County	143
Gadsden County	144
Jefferson County	145
Leon County	141
Liberty County	142
Wakulla County	141

Third Judicial Circuit:

Columbia County	151
Dixie County	150
Hamilton County	158
Lafayette County	149
Madison County	150
Suwannee County	147
Taylor County	145

Fourth Judicial Circuit:

Clay County	153
Duval County	153
Nassau County	155

Fifth Judicial Circuit:

Marion County	155
---------------------	-----

Sixth Judicial Circuit:

Pasco County	157
Pinellas County	156

Seventh Judicial Circuit:

Volusia County	158
----------------------	-----

Eighth Judicial Circuit:

Alachua County	159
Gilchrist County	160
Levy County	160

Ninth Judicial Circuit:

Holmes County	161
Washington County	162

Tenth Judicial Circuit:

Polk County	163
-------------------	-----

Eleventh Judicial Circuit:

Dade County	164
-------------------	-----

Twelfth Judicial Circuit:

Charlotte County	166
Collier County	169
Glades County	165
Hendry County	167
Lee County	168

Thirteenth Judicial Circuit:

Hillsborough County	170
---------------------------	-----

Fourteenth Judicial Circuit:

Calhoun County	171
----------------------	-----

STATE ATTORNEYS— <i>Fourteenth Judicial Circuit—Continued</i>	PAGE
Gulf County	172
Jackson County	170
<i>Fifteenth Judicial Circuit:</i>	
Palm Beach County	173
<i>Sixteenth Judicial Circuit:</i>	
Lake County	174
Sumter County	174
<i>Seventeenth Judicial Circuit:</i>	
Orange County	175
Osceola County	176
<i>Eighteenth Judicial Circuit:</i>	
Manatee County	177
<i>Nineteenth Judicial Circuit:</i>	
DeSoto County	179
Hardee County	179
Highlands County	179
<i>Twentieth Judicial Circuit:</i>	
Monroe County	180
<i>Twenty-first Judicial Circuit:</i>	
Indian River County	183
Martin County	181
Okeechobee County	181
St. Lucie County	182
<i>Twenty-second Judicial Circuit:</i>	
Broward County	184
<i>Twenty-third Judicial Circuit:</i>	
Brevard County	187
Seminole County	186
<i>Twenty-fourth Judicial Circuit:</i>	
Citrus County	188
Hernando County	188
<i>Twenty-fifth Judicial Circuit:</i>	
Flagler County	191
Putnam County	190
St. Johns County	189
<i>Twenty-sixth Judicial Circuit:</i>	
Baker County	195
Bradford County	196
Union County	197
<i>Twenty-seventh Judicial Circuit:</i>	
Sarasota County	198
<i>Twenty-eighth Judicial Circuit:</i>	
Bay County	199
STATE AUDITOR (Letters to)	400
Assistant, authorized to reject item in report to County Commis- sioners	671

STATE BANK AND TRUST COMPANY:	PAGE
Stockholders liable for contract	797
STATE BANKS:	
Authorized to limit withdrawals by depositors	288
Liability of shareholders	262
STATE BOARD OF ACCOUNTANCY (Letters to)	407
Authorized to elect chairman	408
Authorized to retain counsel	408
Law authorizes employment of counsel in certain matters only	964
Law construed	407
STATE BOARD OF ADMINISTRATION:	
Certain claim not allowed as a preferred claim	320
STATE BOARD OF BARBER EXAMINERS:	
When members entitled to compensation	409
STATE BOARD OF CONTROL (Letters to)	410
Governmental agency not liable for negligent operation of motor vehicles	411
Drivers may be held liable	411
When authorized to buy trucks	411
When vested with authority to admit certain students	410
STATE BOARD OF ENGINEERING EXAMINERS:	
Authority to revoke license	414
STATE BOARD OF EXAMINERS IN OPTOMETRY:	
Limited examination authorized	414
State should prosecute for violations of act	415
STATE BOARD OF HEALTH (Letters to)	416
Authorized to make rules and regulations <i>in re</i> : Jails and prison camps	420
Construction of appropriation law	419
County school funds not authorized to be used for administrative or supervisory work	418
Death Certificates—If certain doctors authorized to sign	416
School teachers required to file health certificates	610
State convicts not available for drainage projects	418
STATE BOARD OF MEDICAL EXAMINERS:	
Osteopathic doctors have right to use "M. D." after their title	422
STATE BOARD OF NATUROPATHIC EXAMINERS:	
Construction of law <i>in re</i> : Right of phyto-therapy to prescribe, etc.	224
License to practice, board to determine	426
Physicians, when authorized to issue health certificates	424
STATE BOARD OF PILOT COMMISSIONERS:	
Authority to promulgate rules and regulations	427
STATE BOARD OF PUBLIC WELFARE:	
Persons acting for Reconstruction Finance Corporation free from liability	423
STATE CANAL COMMISSION	406
STATE CHEMIST:	
<i>In re</i> : Duties and expenses	427

STATE CONVICTS:	PAGE
Not available for drainage projects	418
STATE EXECUTIVE COMMITTEE:	
Selection of party officers, delegates and committeemen	912
STATE FORESTER:	
Appropriations—Construction of law	428
Board not exempt from payment gasoline tax	429
STATE GAME COMMISSIONER (Letters to)	430
Application of law <i>in re</i> : Permits to collect specimens	433
Children exempt from payment fishing and hunting license tax	430
Construction of fishing statutes	431
Construction of law <i>in re</i> : Game, non-game birds and fresh water fish	430
Construction of statute <i>in re</i> : Fees	432
STATE GAME LAW:	
When license and right to hunt forfeited	435
STATE HIGHWAYS:	
Construction of law <i>in re</i> : Maintenance and protection	455
Enforcement of laws for protection	883
STATE HOSPITAL FOR THE INSANE:	
Person cannot practice dentistry without license	435
STATE HOTEL COMMISSION:	
Apartments subject to inspection license tax	435-436
When license tax required to be paid to	860
STATE INSTITUTIONS:	
Fees of sheriff for transporting persons	632
STATE LAND:	
Cutting and removing timber, etc., prohibited by law	783
Cutting timber should not be permitted	517
STATE LAW DEPARTMENT	7
STATE LIVE STOCK SANITARY BOARD:	
Authorized to pay one-half of certain costs	436
STATE MARKETING BUREAU:	
Report of sale of seeds required	438
STATE MONEYS DEPOSITED IN BANKS:	
Construction of law, <i>in re</i> : Allocation of interest	327
STATE OFFICES:	
Application of statute, <i>in re</i> : Method for filling vacancy	1052
No person shall hold two	437
When person eligible to hold	584
STATE PLANT BOARD:	
Quarantine rules should not conflict with rules Federal Government..	438
STATE PRISON:	
Sheriff's fees for transporting persons committed	518
STATE PURCHASING DEPARTMENT:	
Board Commissioners State institutions not authorized to install sprinkler system	439
STATE RACING COMMISSION	410

STATE RECORDS:	PAGE
No authority for destruction	420
STATE REGISTRAR VITAL STATISTICS:	
Fees, disposition	419
STATE ROAD DEPARTMENT (Letters to)	450
Advertising for bids for supplies or equipment	440
Authorized to pay for certain road construction work	450
Automobile, when \$2.00 tax applicable	454
Construction of law, <i>in re</i> : Maintenance and protection State high- way	455
Law authorized lease of bridge	453
May sue and be sued	787
Not authorized to purchase bridge	451
Not authorized to return convicts to State Prison Farm	452
Purchase of Connor's Highway, Matanzas Inlet Bridge and Shands Bridge	376
STATE ROADS:	
Gasoline tax, participation	452
State Highway Department can continue to maintain after incorpora- tion into city; County can police	1052
STATE SCHOOL FUND:	
Legal title in State	978
STATE SEAL:	
Florida State Canal Commission may use on letterheads	406
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION (Letters to)	347
<i>Board of Public Instruction:</i>	
Responsible expenditure school funds	350
When motor vehicles exempt from license tax	350
<i>Contracts:</i>	
Bidders for text books not required to qualify	350
<i>County Board of Public Instruction:</i>	
Responsible expenditure school funds	350
<i>County Public School Fund:</i>	
Expenditure authorized for vocational purposes	348
County Board Public Instruction responsible for expenditures	350
<i>General School Fund:</i>	
Construction of Constitution, <i>in re</i> : Commissions for assessing and collecting the ten-mill levy provided for	347
<i>Motor Vehicles:</i>	
When owned by Board of Public Instruction exempt from taxation....	350
<i>Public School Funds:</i>	
Expenditure authorized for vocational purposes	348
<i>Salaries:</i>	
Construction of law, <i>in re</i> : School teachers	350
<i>School Board:</i>	
Construction of law, <i>in re</i> : Reduction teachers' salaries	350
Must use own discretion in selecting drivers for school bus	347

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION— <i>Continued</i>	PAGE
<i>School Bus:</i>	
School Board must use own discretion in selecting drivers	347
<i>School Funds:</i>	
County Board Public Instruction responsible for expenditures	350
Expenditure authorized for vocational purposes	348
<i>School Teachers:</i>	
Construction of law, <i>in re</i> : Reduction of salaries	350
<i>Tax Assessor:</i>	
Construction of Constitution, <i>in re</i> : Commissions for assessing the ten-mill levy provided for general school fund	347
<i>Tax Collector:</i>	
Construction of Constitution, <i>in re</i> : Commission for collecting the ten-mill levy provided for general school fund	347
<i>Text Book Contracts:</i>	
Bidders not required to qualify under law	350
<i>Vocational Education:</i>	
Public school funds may be used	348
STATE TREASURER (Letters to)	318
<i>Board of Administration:</i>	
Certain claim not allowed as a preferred	320
Disposition of funds under provision of Senate Bill No. 40-XX, Chapter 15770	322
Interpretation of law, <i>in re</i> : Distribution gasoline tax	323-324
Judgment against Leon County authorized to be paid	335
Not authorized to remit certain money to Bond Trustees Ocean Shore Improvement District	331
<i>Bonds:</i>	
Duties, <i>in re</i> : Enforcing payment	319
Construction of law, <i>in re</i> : Duties State Treasurer	325
Fidelity or surety—Order of Court authority in certain cases	332
Method of payment when defaulted	329
When accepted in exchange for tax certificates become property State, county or municipality	331
<i>Bonds, Bridge:</i>	
Cannot be used for payment of county and State taxes	328
<i>Bonds, Refunding, Okeechobee County:</i>	
Allocation of gasoline tax	329
<i>Bond Trustees Ocean Shore Improvement District:</i>	
Board of Administration not authorized to remit certain money	331
<i>Bridge Bonds:</i>	
Cannot be used for payment of county and State taxes	328
<i>Company, Trust:</i>	
Disposition of securities when insolvent	321
<i>Corporation:</i>	
Mutual Fire Insurance Company cannot operate under law by non- profit sharing company	322

STATE TREASURER—Continued

PAGE

County Commissioners:

Duties, <i>in re</i> : Enforcing payment of past due coupons on certain bonds	319
---	-----

Coupons:

Duties County Commissioners enforcing payment	319
When accepted in exchange for tax certificates become property State, county or municipality	331

Defaulted Bonds:

Method of payment	329
-------------------------	-----

Fidelity Bonds:

Order of Court authority to State Treasurer	332
---	-----

Fire Insurance Business:

Cannot be operated by non-profit sharing company	322
--	-----

Foreign Insurance Companies:

Must comply with Section 6302, C. G. L.	334
--	-----

Gasoline Tax:

Interpretation of law, <i>in re</i> : Distribution of funds by Board of Administration	323-324
--	---------

Insurance:

Construction of statute, <i>in re</i> : Requirements of Commissioner.....	333
Foreign insurance company must comply with law	334

Insurance Commissioner:

Construction of statute, <i>in re</i> : Requirements	333
--	-----

Insurance Companies:

Not subject to certain tax	333
----------------------------------	-----

Interest, State Moneys:

Construction of law, <i>in re</i> : Allocation	327
--	-----

Judgment:

Board of Administration authorized to pay	335
---	-----

Leon County:

Board of Administration authorized to pay judgment	335
--	-----

License Tax:

Insurance company not subject to in certain cases	333
---	-----

Mutual Fire Insurance Business:

Cannot be operated under law by non-profit sharing corporation....	322
--	-----

Ocean Shore Improvement District:

State Treasurer not authorized to remit certain money to Bond Trustees	331
--	-----

Okeechobee County Refunding Bonds:

Application of law, <i>in re</i> : Allocation of gas tax	329
--	-----

Preferred Claim:

Board of Administration not authorized to allow	320
---	-----

Refunding Bonds:

Application of law, <i>in re</i> : Allocation of gas tax	329
--	-----

Securities:

Construction of law, <i>in re</i> : Duties State Treasurer	325
Disposition of when company becomes insolvent	321

STATE TREASURER— <i>Continued</i>	PAGE
Interpretation of statute, <i>in re</i> : Sale	325
Trust—Disposition in certain cases	318
State Board of Administration:	
Certain claim not allowed as "Preferred"	320
Disposition of funds under provision of Senate Bill No. 40-XX, Chapter 15770	322
Interpretation of law, <i>in re</i> : Distribution gasoline tax	323-324
Judgment against Leon County authorized to be paid	335
State Moneys:	
Construction of law, <i>in re</i> : Allocation of interest	327
Surety Bonds:	
Order of Court authority to State Treasurer	332
Taxes:	
Bridge bonds cannot be used for payment State or county	328
Trust Securities:	
Disposition in certain cases	318
Disposition of when company becomes insolvent	321
STATE TREASURY:	
Money paid into cannot be refunded except by Act of Legislature....	893
STATE WARRANTS:	
Secretary of State should return to Comptroller	296
STATUTE OF LIMITATIONS:	
Persons under disability may commence action after being released seven years	860
Physicians, <i>in re</i> : Suit against for negligence	791
Two years in certain cases	226
STATUTES:	
Validity of	406
STOCK CERTIFICATES:	
Liable for documentary stamps when sold or pledged as collateral....	908
STOCK DROVER:	
Interpretation	875
STOCK EXCHANGE SECURITIES:	
Dealer required to register and file bond	794
STOCKHOLDERS:	
Application of law, <i>in re</i> : Payment net assets by liquidators	1018
Liable for contracts of State Bank & Trust Company	797
When statute of limitations begins to run	288
STOCK TRANSFERS:	
Method of attaching documentary stamps	891
STORES:	
Certain display signs unlawful	417
Municipalities may levy twenty-five per cent of State license tax....	961
STREET TAX:	
General law does not govern	379

STUDENTS:	PAGE
Application of law, <i>in re</i> : Tuition	413
Must register in person for primary election	362
SUBJECT:	
No such person exists under our form of government	929
SUITS, FORCIBLE ENTRY AND DETAINER:	
Jurisdiction conferred by Constitution	761
Statute of limitations	791
SUMMER SCHOOLS:	
Board has power to use school funds for maintaining and operating....	539
SUNDAY:	
Search warrant, when valid if served on	820
Unlawful to play baseball	752
Unlawful to operate moving pictures and other theaters	767
SUPERINTENDENT INDUSTRIAL SCHOOL FOR BOYS:	
Authorized to refuse commitment of boys under certain conditions....	576
SUPERINTENDENTS OF PUBLIC INSTRUCTION (County):	
Application of law, <i>in re</i> : Salaries	534-596
Law does not prohibit decrease in salary, though Corrupt Practice	
Act would be construed as violated in certain cases	612
Responsible for enforcement of compulsory school attendance law....	733
Salary	534
SUPERVISORS OF REGISTRATION (Letters to)	644
Duties, <i>in re</i> : Elections	662
Duties, <i>in re</i> : Racing election	519
Electors, certified list required to be published	1045
General law, construction Sec. 259 C. G. L.	523
Office, when not eligible to run for	652
Primary election law, construction <i>in re</i> : Compensation	650
Registration books, authorized to transfer names	475
Registration books, to be kept at designated places	658
Registration list, authorized to charge for copy	971
Salary, County Commissioners authorized to reduce	647
Transfer certificates should be issued	656
Voters, registered and qualified, application of law <i>in re</i> : Publica- tion of list	665-666
SUPERSEDEAS BOND:	
Status of person during pendency	637
SURETY BOND:	
County Judge	227
SUSPENSIONS:	
Duty of Governor	1036

T

TABULATED REPORT OF CRIMINAL CASES	126
TAX ASSESSMENTS:	
Banks	670
County Commissioners have no authority to reduce valuation on land	690

TAX ASSESSMENTS—Continued	PAGE
Commissions in special tax school districts	951
Justifiable though deed not issued	702
Lands and improvements assessable	713
National banks, personal property	669
Property St. Johns Terminal Co., Duval County	276
TAX ASSESSORS (Letters to)	667
Application of law <i>in re</i> : Assessing the general school fund	1055
Application of law <i>in re</i> : Commissions in special tax school districts	1005
Commissions allowed for assessing intangible personal property	689-691
Commission allowed for collection special taxes	677
Commissions for assessing special road and bridge district taxes	683
Commissions for assessing state lands and lands belonging to widows	1044
Commission for extending taxes after redemption tax sale certificates	691
Commissions not allowed for entering on tax roll property sold to state	683
Correction assessment roll authorized	673
Duty, tax assessment roll	692
Duties in assessing intangible personal property	680-681
Fees, application of law	692
Itemized statement office expenses required	686
Not entitled to commission on extra work	670
Not entitled to fees, special tax school district taxes	595
Report, fees required	400
Tax exemption	687
Veterans' exemption	681
When entitled to compensation	514
When entitled to one and one-half per cent commission	604
When entitled to payment of commissions	693
When not entitled to compensation	275
TAXATION:	
Assessment roll should be corrected	673
City property when exempt	682
College property when not exempt	685
Corporations when exempt	671
Discounts allowed, optional with city	726
Duty of owner of property to make return—Recourse	865
If city authorized to change assessed valuation of certain property	1030
If moving picture industry exempt	1037
Manufacturers of rope when exempt	1064
Hasonic Home of Florida exempt	721
Masonic lodge building when exempt	821
Municipal property when not exempt	672
Municipal property when exempt	469
Property leased by county or municipality not exempt	480
Property owned by Yale University not exempt	684
Race horses when not subject to	677

TAXATION— <i>Continued</i>	PAGE
Women's Club when exempt	758
World War veterans not exempt on certain property	678
TAXATION WITHOUT REPRESENTATION:	
Definition of	929
TAXES:	
Application of law <i>in re</i> : Acceptance of bonds, coupons or other evidence of indebtedness on payment	530
Assessment and collection	777
Bonds, when acceptable in payment	501
Bonds when receivable at par in redemption of lands	713
Certain property deeded to college not exempt	777
Delinquent—Payment with bonds authorized by law	1009
Discount should be allowed under certain conditions	672
Last assessment valuation basis for computation when delinquent	466
Municipality not authorized to accept own bonds in payment	815
Payable only in money	759
Personal property—Methods of enforcement of collection	513
Special—Commission allowed when collected	677
Special road and bridge district—When one-half to be paid to cities and towns	508
State and county may be accepted when Everglades Drainage not proffered	284
State and county—When lands in Everglades Drainage District subject to	290
State officials not authorized to accept payment under protest	236
TAX ASSESSMENT ROLL:	
Duty of assessor and county commissioners	692
TAX BOOKS:	
Governor not authorized to extend time for closing	226
TAX CERTIFICATE, CITY:	
Bill in chancery proper procedure for foreclosure	832
TAX CERTIFICATES AND TAX LIENS:	
Municipalities authorized to accept installment payments	721
TAX COLLECTORS (Letters to)	693
Commissions allowed on tax certificates	703
Commissions for collecting general school taxes should be paid from general school fund	1020
Date of tax sales to be designated	701
Detective agency, application of law, <i>in re</i> : Collection license tax....	1001
Disposition of funds, <i>in re</i> : Payment of five matured bonds	564
Disposition of interest credited to balances on funds in hand	547
Fees allowed for collecting special district taxes	711
Fees uncollected inure to office after term expires	1045
Fees—Report required	400
General school fund, application of law, <i>in re</i> : Collection	1055
Method of increasing or decreasing bonds	231

TAX COLLECTORS— <i>Continued</i>	PAGE
Municipal corporations authorized to abolish	679
Not entitled to commissions in certain cases	263
Occupational license tax—Duties.....	920
Report, <i>in re</i> : Fees	400
Should sign personally all tax certificates	714
When license tax required of wholesale fruit and vegetable business....	704
TAX COLLECTING AGENCY:	
License tax required	699-770
Not subject to cancellation	1060
TAX DEEDS:	
All tax liens must be settled by purchaser before issuance	825
Application of law	785
How obtained	502
Homestead, issuance on	688
Purchaser to obtain possession of property	850
TAXES, DELINQUENT:	
Payment with bonds or delinquent coupons, construction of law.....	747
TAX EXEMPTION:	
Application	919
Certain property excluded	914
Construction of Constitution, <i>in re</i> : War veterans	356
Construction of law, <i>in re</i> : World War veterans	667
Duty of city to authorize assessing and collecting authority to allow or deny	727
If applicable to real or personal property; if widows entitled to	374
Municipalities	905
Not allowed on certain property	562
Not allowed on property purchased with money paid to veterans by United States Government	954
Paint manufacturing plant subject to	705
Person losing one eye not entitled to	471
Preachers' relief fund	398
Property leased by county and municipality not subject to	480
War veterans, disabled persons and dependents	673
World War veterans	676
Who entitled to	687
Widows—Divorced women not entitled to	679
TAX FUNDS:	
Construction of law, <i>in re</i> : Ocean Shore Improvement District	715
TAX LIENS:	
Clearing property	837
Must be settled by purchaser before deed issued	825
TAX REDEMPTION:	
Construction of law, <i>in re</i> : Costs and fees of redemption officer	1062
Construction of statute	291
Owner may redeem part of tract	503

TAX REDEMPTION— <i>Continued</i>	PAGE
Valuation basis	480
TAX RETURN:	
Property owner, duty to make	865
TAX, ROAD AND BRIDGE:	
Cities and towns entitled to one-half of amount realized on property within corporate limits	477
TAX ROLLS:	
Commission not allowed for entering property sold to State	683
TAX SALE CERTIFICATES:	
After commencement of suit person cannot redeem or purchase a part thereof	471
Application of law	372-785
Authority for refunding to holder amount received by State, etc.	314
Authority trustees I. I. fund, <i>in re</i> : Everglades Drainage District....	458
Commission for extending taxes after redemption	691
Comptroller without authority to cancel in certain cases	253
Construction of law	483-497
Construction of law, <i>in re</i> : Legality of notice	259
Costs and expenses, payment incident to suits	264
Foreclosing, method of	792
Foreclosure, application of law	271
Foreclosure, application of law, <i>in re</i> : Proceedings	1025
Foreclosure, certain procedure not authorized	260
Foreclosure, construction of statute	1007
Foreclosure, proper parties	754
Intangible tax law, not taxable under	689
Purchasing and foreclosing, method	483
Procedure when illegally sold	696
Redeem, who entitled to	470
Redemption, amount required and method	248-478-482
Redemption, County, district or municipality may declare class of bonds to be accepted	395
Redemption, <i>in re</i> : Acceptance of bonds, delinquent coupons, etc.	818
Redemption, part or interest of value, not area, to be considered	497
Refund claimed	781
Right of purchaser to hold owner for full amount of interest and face of certificates	472
Rules of law as to redemption	258
Sales of	750
Suits, <i>in re</i> : Payment costs and expenses	264
Tax Assessors and Collectors, construction of statute, <i>in re</i> : Duties	251
Tax Collector, commission allowed	703
Tax Collector, <i>in re</i> : Signing by	714
Tax liens, <i>in re</i> : Clearing property	837
Timber, method to pursue to prevent cutting	586
Transfer and assignment, interpretation of law, <i>in re</i> : Fees Clerk Circuit Court	271

	PAGE
TAX SALE LISTS, DELINQUENT:	
Board authorized to select newspaper for publication	555
No authority to pay certain claim	297
TAX SALE NOTICE:	
Method of publishing	725
Publication and length of time required	701
TAX SALES:	
Date to be designated by tax collector	701
Fees for recording	502
Newspaper, when qualified to publish	833
Publication of must follow closing of books	698
Publication of notice	805
TEACHERS:	
Whites should not be employed to teach negroes	370
TEACHERS' SALARIES:	
Board not authorized to pay interest when past due	541
TEACHERS' UNIT LAW:	
Funds provided not limited to payment of teachers' salaries	775
TEAR GAS FOUNTAIN PENS:	
Unlawful to carry	790
TEXT BOOK CONTRACTS:	
Bidders not required to qualify under law	350
THEATERS:	
Unlawful to operate on Sunday	767
TIMBER:	
Cutting should not be permitted on state lands	517
Cutting and removing prohibited by law	783
TIRE DEALERS:	
License tax required—No distinction between new and second-hand tires	1054
TIRE AND TUBE DEALERS:	
Law construed	700
TITLE CERTIFICATE:	
Automobile, evidence of ownership	814
TOLLS:	
Preachers exempt from payment	906-955
Militia and preachers exempt from paying	924
TOLL BRIDGE ACROSS APALACHICOLA RIVER:	
Law valid	455
TOWN:	
Act of Legislature necessary to change name	814
TOWN COUNCIL:	
Supplies, member prohibited from purchasing from himself	593
TRADING STAMPS:	
License tax required on each place of business	898
Merchants to pay license on each place of business using	848

TRAFFIC OFFICERS:	PAGE
Construction of statute	549
TRAFFIC REGULATIONS:	
Motor vehicles, construction of law <i>in re</i> : Use	457
TRAVELERS' CHEQUES:	
Documentary stamp tax, not subject to	893
TRUCKS:	
Fish dealer's license and motor vehicle license, if owners subject to payment	373
For-Hire license, when tag required	1015
National Convoy & Trucking Company and Blue's Truck Line, <i>in re</i> : mileage tax due	309
"Private use rates" applicable	388
Refund of license tax not authorized	1029
TRUCK AND BUS COMPANIES:	
Corporation tax, not liable for	835
TRUSTEE:	
When relieved of obligation to qualify	769
TRUSTEES, COUNTY BONDS:	
Construction of law <i>in re</i> : Compensation	375
TRUST COMPANIES:	
Liquidator, State Comptroller has supervision and may appoint	1008
TRUST ESTATES:	
Intangible tax law, status under	898
Liquidator's expense, pro-rata part should be borne	270
TRUST FUNDS:	
Investments in mortgages, construction of statute	856
TRUST SECURITIES:	
Disposition in certain cases	318
Disposition of when company becomes insolvent	321
TRUSTEES INTERNAL IMPROVEMENT FUND:	
Everglades Drainage tax certificates, authority	458
Lands and tax receipt, sale of	461
Not authorized to convey right of way to U. S. government	460
TRUSTEE SPECIAL TAX SCHOOL DISTRICT:	
Candidate must be qualified elector	602
Question of disqualification	595
TUITION FEES:	
Application of law	715
TYPEWRITER REPAIRS:	
Agent required to pay license tax	707

U

UNDERCOVER MEN:	
Sheriff not authorized to employ	403
UNDERTAKER:	
When person should be designated such, and license required	704

1150 BIENNIAL REPORT OF THE ATTORNEY GENERAL

UNDERTAKERS AND EMBALMERS:	PAGE
Liable for license tax	714
UNEMPLOYMENT BUREAU:	
Board authorized to employ person to work with Federal govern- ment	555
UNEXPENDED BALANCE:	
Disposition of	530
UNITED STATES ARMY:	
Only officers and enlisted men exempt from purchase of motor ve- hicle license tag	380
When officers and enlisted men exempt from payment automobile license tax	352
UNITED STATES OFFICIALS:	
Entitled to automobile license tag free	883
UNIVERSITY OF FLORIDA:	
Application of law <i>in re</i> : Tuition of certain students	413
Athletic association not exempt from Federal revenue act	412
Compensation of dean of College of Engineering	909
Nomination and appointment school teachers	462
UTILITIES ACT:	
Construction	904

V

VACANCY:	
Application of statute, <i>in re</i> : Method for filling	1062
VACANCY, BROWARD COUNTY PORT DISTRICT:	
Statute authorizes Governor to fill	1046
VALIDITY:	
Chapter 14,724, Acts of 1931	406
VETERANS:	
Barber's law, not exempt, payment of tax required	881
Barber's law, registration fee not exempt	833
Certain property not exempt	954
Exemption, each member of organization must be qualified to re- ceive	1063
Fish dealers license, when exempt	389
Hunting license, not exempt	881
License, granting of largely matter of practical application.....	850
License tax exempt when disabled	861
License tax exemption, application of law	846
License tax, motor vehicles, when exempt	387
License tax to practice law, when exempt	846
License tax, when entitled to exemption	772
Occupational license tax, when entitled to free	575
Occupational license tax, when not exempt	707
Occupational license tax, widows of not exempt	835

VETERANS—Continued

PAGE

Peddlers' license, method of obtaining and restrictions	707
Poll tax, when exempt	660
Registration fee, not exempt	976
Taxation on property purchased with money paid by United States Government, not exempt	678-954
Tax exemption	673
Tax exemption, construction and differentiation of statutes	667
Tax exemption, how may be allowed	676
Tax exemption, Tax Collector to decide if entitled to	847
Tax exemption, when entitled to	681-771
Tax exemption, when entitled to \$1,000	755

VESSELS:

Port Commissioners authorized to dispose of	368
---	-----

VOLUNTARY LIQUIDATION:

Requirements of banks and trust companies	735
---	-----

VOTE:

Certain persons not qualified	640
Elector, method of qualification	661
Persons convicted of larceny not qualified	645
Poll tax two receipts necessary	661
Primary, prerequisites	657
Right not forfeited when persons reside in place other than county in which permanent home and domicile established	492
Suspension of sentence does not remove disqualification	646
When should not be counted	989

VOTERS:

Ballot, Inspectors may assist in marking	979
Ballot not allowed to be taken to bedside	662
Morally bound to support nominee of his party	986
Publication of list required	1033
Registration of—Transfer certificates should be issued	656
Special tax school district, qualification defined	544

VOTERS, ABSENTEE:

Ballots may be cast in second primary	581
County Judge, compensation for taking oath not authorized	584
Method of voting	580

VOTING MACHINES:

Law providing for use in conflict with election laws	961
--	-----

W

WATER BOTTOMS:

Oysters and clams, leasing and cultivating for growing	390
--	-----

WARRANTS, CRIMINAL:

Statute provides shall be issued in duplicate	618
When may be served in another county	999

WAR VETERANS:

Barber's law, not exempt, payment of tax required	881
Barber's law, registration fee not exempt	833
Certain property not exempt	954
Exemption, each member of organization must be qualified to receive	1063
Fish dealers license, when exempt	389
Hunting license, not exempt	881
License, granting of largely matter of practical application	850
License tax, exempt when disabled	861
License tax exemption, application of law	846
License tax, motor vehicles, when exempt	387
License tax to practice law, when exempt	846
License tax, when entitled to exemption	772
Occupational license tax, when entitled to free	575
Occupational license tax, when not exempt	707
Occupational license tax, widows of not exempt	835
Peddlers' license, method of obtaining and restrictions	707
Poll tax, when exempt	660
Registration fee, not exempt	976
Taxation on property purchased with money paid by United States Government, not exempt	678-954
Tax exemption	673
Tax exemption, construction and differentiation of statutes	667
Tax exemption, how may be allowed	676
Tax exemption, Tax Collector to decide if entitled to	847
Tax exemption, when entitled to	681-771
Tax exemption, when entitled to \$1,000	755
Widows, not exempt from payment occupational license tax	835

WEIGHING MACHINES:

License tax, <i>in re</i> : Placing or operating	987
--	-----

WESTERN UNION TELEGRAPH COMPANY:

State Attorney not authorized to search files without consent of management	395
---	-----

WHISKEY:

Order for destroying should be issued to Sheriff by Judge trying case	516
---	-----

WIDOWS:

No legal objection to applying tax exemption to undivided interest in real estate	679
Not entitled to tax exemptions if divorced from second husband	679
Pension allowed	809
Tax assessment, construction of law, <i>in re</i> : Exemptions	890
Tax exemption	725
Tax exemption, if entitled to on real or personal property	374
When not entitled to exemption	676-1054

WIFE:

Mortgage foreclosure, <i>in re</i> : Service upon	999
---	-----

WILD BIRDS, NESTS AND EGGS:

Permits to collect specimen, applicable to law	433
--	-----

WILLS:

Homestead and dower rights, construction	1010
Foreign bank and trust company not authorized to administer estates	1057
Recordation necessary in county where property devised is located....	572
When recognized in State	784

WINDOWS:

Designated and sold as personal property	697
--	-----

WITNESS FEES:

Method of payment when case transferred to another County	397
Prisoner entitled to	634
When person held in custody entitled to	358

WOMAN:

Entitled to vote at husband's permanent place of residence	978
--	-----

WOMEN'S CLUBS:

Taxation, when exempt	758
-----------------------------	-----

WORTHLESS CHECK:

Payment does not release maker from criminal prosecution	625
--	-----

WRITS AND PROCESSES:

Sheriff's duties, <i>in re</i> : Service	629
--	-----

Y

YALE UNIVERSITY:

Property owned in State not exempt from taxation	684
--	-----